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HOLY MATRIMONY

A TREATISE ON THE DIVINE LAWS OF MARRIAGE

HOLY MATRIMONY

A TREATISE

ON

The Divine Laws of Marriage

BY

OSCAR D. WATKINS, M.A.

A SENIOR CHAPLAIN

ON HER MAJESTY'S BENGAL ESTABLISHMENT

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To

RICHARD MEUX BENSON,

Student of Christ Church, Oxford,

and First Superior of the Society of S. John the Evangelist,

TO WHOM I OWE MORE

THAN TO ANY OTHER HUMAN TEACHER,

THIS VOLUME IS

AFFECTIONATELY AND REVERENTLY

INSCRIBED.

RICHARD MEX BRINSON

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PREFACE

A TREATISE on the Divine laws of marriage has long been a recognized need in the Anglican communion. It remains to be seen whether the present volume will be found to meet this need with any adequacy.

I have endeavoured to indicate as fully as possible all the various sources from which my material has been drawn. It will be sufficient here to notice

(a) That the references to the Fathers are commonly given with the paging of Migne's *Patrologia*, as being the collection readiest to hand in the great public libraries, and

(b) That among modern writers I am mainly indebted to the four following:—

1. Keble, *Sequel to the argument against unduly repealing the laws which treat the nuptial bond as indissoluble*. Oxford, 1857.
2. Zhishman, Dr. Jos., *Das Eherecht der Orientalischen Kirche*. Wien, 1864.
3. Freisen, Dr. Jos., *Geschichte der Canonischen Eherechts*. Tübingen, 1888.
4. Thiersch, Heinrich W. J., *Das Verbot der Ehe innerhalb der nahen Verwandtschaft*. Nördlingen, 1869.

I owe a deep debt of gratitude to my old friend Dr. Serrell, of Lincoln's Inn, for his goodness in undertaking the burdensome labour of revising the work for the press. The fact that Dr. Serrell's own standpoint precludes his sympathy with my arguments, or his acceptance of my conclusions, can only make me the more grateful to him.

OSCAR D. WATKINS.

MUSSOORIE,
NORTH-WEST PROVINCES OF INDIA,
All Saints' Eve, 1894.

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CHAPTER I

OF THE DIVINE INSTITUTION OF MARRIAGE

TWO chief opinions are current with regard to the origin and consequent character of human marriage. All the historical churches of Christendom, and also most of the members of other Christian societies, hold that marriage is of Divine institution. On the other hand a considerable number of secular writers, including many lawyers of note, regard marriage purely as a civil contract or status, with which Divine institution has no more to do than is necessarily involved in the formation of human nature as we find it, and the terms of which human society is accordingly at liberty to modify as occasion may reasonably demand. Clearly it is only on the former theory that the consideration of marriage can come within the scope of Theology. In support of the view that marriage is of Divine institution theologians appeal to the three great sources of all Theology, viz., (1) Holy Scripture, (2) Christian History, and (3) Reason.

Two
opinions
as to the
origin of
Marriage.

In
Theology
the origin
of
Marriage
is held to
be Divine.

1. HOLY SCRIPTURE.

The following are the principal authorities from Holy Scripture for the belief that marriage is of Divine institution.

1. Holy
Scripture.

(i.) *S. Matthew* xix. 4-6 :

4 Ὁ δὲ ἀποκριθεὶς, εἶπεν αὐτοῖς· Οὐκ ἀνέγνωτε, ὅτι ὁ ποιήσας ἀπ' ἀρχῆς, ἄρσεν καὶ θῆλυ ἐποίησεν αὐτοὺς ;

4 And he answered and said unto them, Have ye not read, that he which made *them* at the beginning made them male and female.

5 Καὶ εἶπεν· Ἐνεκεν τούτου καταλείψει ἄνθρωπος τὸν πατέρα καὶ τὴν μητέρα, καὶ προσκολληθήσεται τῇ γυναικὶ αὐτοῦ, καὶ ἔσονται οἱ δύο εἰς σάρκα μίαν·

6 Ὡστε οὐκέτι εἰσὶ δύο, ἀλλὰ σὰρξ μία. Ὁ οὖν ὁ Θεὸς συνέζευξεν, ἄνθρωπος μὴ χωριζέτω.

(ii.) *S. Mark* x. 6–9 :

6 Ἀπὸ δὲ ἀρχῆς κτίσεως, ἄρσεν καὶ θῆλυ ἐποίησεν αὐτοὺς ὁ Θεός.

7 Ἐνεκεν τούτου καταλείψει ἄνθρωπος τὸν πατέρα αὐτοῦ καὶ τὴν μητέρα, καὶ προσκολληθήσεται πρὸς τὴν γυναῖκα αὐτοῦ.

8 Καὶ ἔσονται οἱ δύο εἰς σάρκα μίαν. Ὡστε οὐκέτι εἰσὶ δύο, ἀλλὰ μία σὰρξ.

9 Ὁ οὖν ὁ Θεὸς συνέζευξεν, ἄνθρωπος μὴ χωριζέτω.

5 And said, For this cause shall a man leave father and mother, and shall cleave to his wife: and they twain shall be one flesh?

6 Wherefore they are no more twain, but one flesh. What therefore God hath joined together, let not man put asunder.

6 But from the beginning of the creation God made them male and female.

7 For this cause shall a man leave his father and mother, and cleave to his wife;

8 And they twain shall be one flesh: so then they are no more twain, but one flesh.

9 What therefore God hath joined together, let not man put asunder.

It will be remarked that these two passages are not merely taken from Holy Scripture, but that they give the words of our Lord Himself. Our Lord expressly declares that it was God, Who “from the beginning of the creation” “made them male and female”; that it was He Who said, “They twain shall be one flesh”; that *therefore* “they are no more twain but one flesh”; that “God hath joined” them “together”; and that *therefore* man may not put them asunder.

(iii.) *Genesis* ii. 21–25 :

21 And the LORD God caused a deep sleep to fall upon Adam, and he slept: and he took one of his ribs, and closed up the flesh instead thereof;

22 And the rib, which the LORD God had taken from man, made he a woman, and brought her unto the man.

23 And Adam said, This *is* now bone of my bones, and flesh of my flesh: she shall be called Woman, because she was taken out of Man.

24 Therefore shall a man leave his father and his mother, and shall cleave unto his wife: and they shall be one flesh.

In this passage we have the Old Testament narrative of the formation of woman by God, and of Adam’s immediate recognition of the purpose of this Divine action as being the intimate union indicated by the words “bone of my bone and flesh of my flesh.” The corollary “Therefore shall a man leave his

father and his mother, and shall cleave unto his wife: and they shall be one flesh" is not to be taken as a continuation of the words of Adam, but as the utterance of God, for so our Lord explains it in the passages already noticed; the *therefore* applying to the Divine act in forming woman, and not merely to the words of Adam.

(iv.) *Malachi* ii. 14–16:

14 ¶ Yet ye say, Wherefore? Because the LORD hath been witness between thee and the wife of thy youth, against whom thou hast dealt treacherously: yet *is* she thy companion, and the wife of thy covenant.

15 And did not he make one? Yet had he the residue of the spirit. And wherefore one? That he might seek a godly seed. Therefore take heed to your spirit, and let none deal treacherously against the wife of his youth.

16 For the LORD, the God of Israel, saith that he hateth putting away: for *one* covereth violence with his garment, saith the LORD of hosts: therefore take heed to your spirit, that ye deal not treacherously.

Here it is God, Who "did make one." At least one definite Divine purpose moved Him thus to "make one," that "He might seek a godly seed." And God, Who thus made one, "saith that He hateth putting away."

(v.) *Ephesians* v. 22–33:

22 Αἱ γυναῖκες, τοῖς ἰδίοις ἀνδράσιν ὑποτάσσεσθε, ὡς τῷ Κυρίῳ·

23 ὅτι ὁ ἀνὴρ ἐστὶ κεφαλὴ τῆς γυναίκος, ὡς καὶ ὁ Χριστὸς κεφαλὴ τῆς ἐκκλησίας, καὶ αὐτὸς ἐστὶ σωτὴρ τοῦ σώματος.

24 ἀλλ' ὥσπερ ἡ ἐκκλησία ὑποτάσσεται τῷ Χριστῷ, οὕτω καὶ αἱ γυναῖκες τοῖς ἰδίοις ἀνδράσιν ἐν παντί.

25 Οἱ ἄνδρες, ἀγαπᾶτε τὰς γυναῖκας ἑαυτῶν, καθὼς καὶ ὁ Χριστὸς ἡγάπησε τὴν ἐκκλησίαν, καὶ ἑαυτὸν παρέδωκεν ὑπὲρ αὐτῆς·

26 ἵνα αὐτὴν ἀγιάσῃ, καθαρίσας τῷ λουτρῷ τοῦ ὕδατος ἐν ῥήματι·

27 ἵνα παραστήσῃ αὐτὴν ἑαυτῷ ἑνδοξὸν τὴν ἐκκλησίαν, μὴ ἔχουσαν σπῖλον ἢ ῥυτίδα ἢ τι τῶν τοιούτων, ἀλλ' ἵνα ᾖ ἁγία καὶ ἄμωμος.

22 Wives, submit yourselves unto your own husbands, as unto the Lord.

23 For the husband is the head of the wife, even as Christ is the head of the Church: and he is the Saviour of the body.

24 Therefore as the Church is subject unto Christ, so *let* the wives *be* to their own husbands in every thing.

25 Husbands, love your wives, even as Christ also loved the Church, and gave himself for it;

26 That he might sanctify and cleanse it with the washing of water by the Word,

27 That he might present it to himself a glorious Church, not having spot, or wrinkle, or any such thing; but that it should be holy and without blemish.

28 οὕτως ὀφείλουσιν οἱ ἄνδρες ἀγαπᾶν τὰς ἑαυτῶν γυναῖκας, ὡς τὰ ἑαυτῶν σώματα· ὁ ἀγαπῶν τὴν ἑαυτοῦ γυναῖκα, ἑαυτὸν ἀγαπᾷ.

29 οὐδεὶς γάρ ποτε τὴν ἑαυτοῦ σάρκα ἐμίσησεν, ἀλλ' ἐκτρέφει καὶ θάλπει αὐτήν, καθὼς καὶ ὁ Κύριος τὴν ἐκκλησίαν.

30 ὅτι μέλη ἐσμὲν τοῦ σώματος αὐτοῦ, ἐκ τῆς σαρκὸς αὐτοῦ, καὶ ἐκ τῶν ὀστέων αὐτοῦ.

31 ἀντὶ τούτου καταλείψει ἄνθρωπος τὸν πατέρα αὐτοῦ καὶ τὴν μητέρα, καὶ προσκολληθήσεται πρὸς τὴν γυναῖκα αὐτοῦ, καὶ ἔσονται οἱ δύο εἰς σάρκα μίαν.

32 τὸ μυστήριον τοῦτο μέγα ἐστίν· ἐγὼ δὲ λέγω εἰς Χριστὸν, καὶ εἰς τὴν ἐκκλησίαν.

33 πλὴν καὶ ὑμεῖς οἱ καθ' ἓνα, ἕκαστος τὴν ἑαυτοῦ γυναῖκα οὕτως ἀγαπάτω ὡς ἑαυτόν· ἡ δὲ γυνὴ ἵνα φοβῇται τὸν ἄνδρα.

28 So ought men to love their wives as their own bodies. He that loveth his wife loveth himself.

29 For no man ever yet hated his own flesh; but nourisheth and cherisheth it, even as the Lord the Church:

30 For we are members of his body, of his flesh, and of his bones.

31 For this cause shall a man leave his father and mother, and shall be joined unto his wife, and they two shall be one flesh.

32 This is a great mystery: but I speak concerning Christ and the Church.

33 Nevertheless let every one of you in particular so love his wife even as himself; and the wife see that she reverence *her* husband.

S. Paul here, instructing married persons as to their mutual obligations, bases his instructions on a mystical ground which necessarily involves the Divine consecration of marriage, the ground being, to use the words of the Anglican prayer, that God "has consecrated the state of Matrimony to such an excellent mystery that in it is signified and represented the spiritual marriage and unity betwixt Christ and His Church."

In Holy Scripture, therefore, and notably in the words of our Lord, the ordinance of marriage is referred to a Divine source.

2. THE CHURCH IN HISTORY.

2. The Church in History.

Passing from Holy Scripture to the testimony of the Church in history we find that the Divine institution of marriage has been maintained at all times and in all branches of the Church with practical unanimity. A very few references will therefore suffice.

S. Chrysostom in the *De libello repudii* says: "Read not to me the laws which have been enacted by those without, the laws commanding to give a bill of divorce, and to put away.

For in that day God will not judge thee by those laws, but by the laws which He has Himself imposed.”¹

S. Augustine in the opening chapter of the *De Bono Conjugali* writes: “Thus the husband and the wife constitute the first bond of human society, and even these God did not make in separation, and then join together as persons of alien stock, but he made the one out of the other; signifying also the strength of the union in the side from which the woman being drawn was formed.”²

S. Jerome commenting on Malachi ii., 13 sqq. says: “Since therefore one made each of the two, both the man and the woman: on this account the union of both was effected by God, that children should be born.”³

S. Thomas Aquinas writes: “But the law of the unity of the wife (with the husband) was not instituted by man but by God, nor was it ever delivered by word or epistle, but impressed upon the heart, like other things which in any way pertain to the law of nature. And so in this matter dispensation could be made by GOD alone.”⁴

Pope Leo XIII. in the Encyclical *Arcanum Divine Sapientie* issued on the 10th February, 1880, declares: “Since matrimony has GOD for its author, and was from the beginning a certain foreshadowing of the mystery of the Incarnation of the SON of GOD, it has ever been invested from the very beginning with a

¹ S. Chrysostom, *De libello repudii* (Homily on 1 Corinthians vii., 39, 40), “Μὴ γάρ μοι τοὺς παρὰ τοῖς ἔξωθεν κειμένους νόμους ἀναγνῶς, τοὺς κελεύοντας διδόναι βιβλίον ἀποστασίου, καὶ ἀφίστασθαι. Οὐ γὰρ δὴ κατὰ τούτους σοι μέλλει κρίνειν τοὺς νόμους ὁ Θεὸς ἐν τῇ ἡμέρᾳ ἐκείνῃ, ἀλλὰ καθ’ οὗς αὐτὸς ἔθηκε.”

² S. Augustine, *De Bono Conjugali*, i. 1.

“Prima itaque naturalis humanæ societatis copula vir et uxor est. Quos nec ipsos singulos condidit Deus, et tanquam alienigenas junxit; sed alteram creavit ex altero; signans etiam vim conjunctionis in latere, unde illa detracta, formata est.”

³ S. Jerome in Mal. ii. 13, sqq.

“Cum ergo unus utrumque fecerit, et virum et mulierem: propterea a Deo facta est utriusque conjunctio, ut liberi nascerentur.”

⁴ S. Thomas. Supp. Quæst. 65, Art. ii.

“Lex autem de unitate uxoris non est humanitus sed divinitus instituta, nec unquam verbo aut litteris tradita, sed cordi impressa, sicut et alia quæ ad legem naturæ qualitercunque pertinent. Et ideo in hoc a solo Deo dispensatio fieri potuit.”

sacred and religious character, which cannot be regarded as accidental, but rather as something belonging to it, and not as received from man, but as imprinted by nature.”¹

The Anglican Church is not less clear in the matter than the rest of Christendom.

(i.) In the opening address of the Marriage Service of the Church of England it is stated that—

“Matrimony . . . is an honourable estate, instituted of God in the time of man’s innocency, signifying unto us the mystical union that is betwixt Christ and his Church.”

Here it is laid down (*a*) that GOD instituted Matrimony, (*b*) that He did so in the time of man’s innocency, and (*c*) that the Matrimony thus instituted by GOD has a certain mystical significance.

(ii.) The charge to the persons about to be married that they should disclose any impediments is as follows:

“I require and charge you both, as ye will answer at the dreadful day of judgement when the secrets of all hearts shall be disclosed, that if either of you know any impediment, why ye may not be lawfully joined together in Matrimony, ye do now confess it. For be ye well assured, that so many as are coupled together otherwise than God’s Word doth allow are not joined together by God; neither is their Matrimony lawful.”

In this charge it is (*a*) implied that the Matrimony which God has instituted only allows the coupling together of persons subject to certain laws and conditions, while (*b*) it is asserted “that so many as are coupled together otherwise than God’s Word doth allow are not joined together by God,” and (*c*) that the Matrimony of such persons (notwithstanding any civil authorization) is not, in a Christian sense, lawful.

(iii.) In the questions preceding the betrothal the persons are asked whether they are prepared “to live together *after God’s ordinance* in the holy estate of Matrimony,” and the leading requirements of that ordinance are mentioned.

“*M.* Wilt thou have this Woman to thy wedded wife, to live together after God’s ordinance in the holy estate of Matrimony? Wilt thou love her, comfort her, honour, and keep her in sickness and in health; and, forsaking all other, keep thee only unto her, so long as ye both shall live?”

“*N.* Wilt thou have this Man to thy wedded husband, to live together after God’s ordinance in the holy estate of Matrimony? Wilt thou obey him, and

¹ Encyc. *Arcanum Divinæ Sapientiæ*. Feb. 10, 1880.

serve him, love, honour, and keep him in sickness and in health; and, forsaking all other, keep thee only unto him, so long as ye both shall live?"

(iv.) In the actual betrothal each person undertakes "to have and to hold" the other under all circumstances "till death us do part, *according to God's holy ordinance.*"

"I *M.* take thee *N.* to my wedded wife, to have and to hold from this day forward, for better for worse, for richer for poorer, in sickness and in health, to love and to cherish, till death us do part, according to God's holy ordinance; and thereto I plight thee my troth.

"I *N.* take thee *M.* to my wedded husband, to have and to hold from this day forward, for better for worse, for richer for poorer, in sickness and in health, to love, cherish, and to obey, till death us do part, according to God's holy ordinance; and thereto I give thee my troth."

(v.) In the prayer after the giving of the ring the Minister prays that the persons "may ever remain in perfect love and peace together, and live *according to Thy laws.*"

(vi.) On joining the right hands together the Priest says:

"Those whom God hath joined together let no man put asunder."

Here it is clearly taught (*a*) that Christian persons rightly married are "joined together by God," and (*b*) that when God has so joined husband and wife together, it is beyond the competence of man to put them asunder.

(vii.) The prayer preceding the final blessing is throughout an appeal to the Divine institution of Matrimony, and to the Divine teaching in connexion with it.

"O GOD, who by thy mighty power hast made all things of nothing; who also (after other things set in order) didst appoint, that out of man (created after thine own image and similitude) woman should take her beginning; and, knitting them together, didst teach that it should never be lawful to put asunder those whom thou by Matrimony hadst made one: O God, who hast consecrated the state of Matrimony to such an excellent mystery, that in it is signified and represented the spiritual marriage and unity betwixt Christ and his Church; Look mercifully upon these thy servants, that both this man may love his wife, according to thy Word (as Christ did love his spouse the Church, who gave himself for it, loving and cherishing it even as his own flesh), and also that this woman may be loving and amiable, faithful and obedient to her husband; and in all quietness, sobriety, and peace, be a follower of holy and godly matrons. O Lord, bless them both, and grant them to inherit thy everlasting kingdom; through Jesus Christ our Lord. *Amen.*"

In this prayer it is affirmed (*a*) that God knit man and woman together, making them one by Matrimony, (*b*) that He did teach that it should never be lawful to put such persons

asunder, (*c*) that He has consecrated the state of matrimony to an excellent mystery, and (*d*) that His word teaches that a man should love his wife, as Christ did love His Spouse the Church.

(viii.) The final blessing appeals to the Divine action in the marriage of Adam and Eve, when GOD "did sanctify and join them together in marriage."

"ALMIGHTY God, who at the beginning did create our first parents, Adam and Eve, and did sanctify and join them together in marriage; Pour upon you the riches of his grace, sanctify and bless you, that ye may please him both in body and soul, and live together in holy love unto your lives' end. *Amen.*"

3. REASON.

3. Reason. Apart from the utterances of authority, reason seems to require that marriage should be derived from a higher source than the enactments of the particular legislatures of the various civil communities. The family is the unit of human society, and marriage is the foundation of the family. On the family, and therefore on marriage, all existing human societies are based, and to derive the fundamental laws of marriage from the enactments of existing societies is to become involved in a vicious circle. Attempts have been made of late years to establish as a fact of history a certain uniformity of progression from low sexual relations to the exalted family type, but all such attempts have confessedly broken down.¹ It is upon the family that the State is based not less in history than in reason. It is not therefore to the State that we should look for the moral foundations of the family. The State may indeed find itself under a virtual obligation to translate the moral foundations of the family into current legislative forms, that so what is binding by the law of GOD may be legally required by the community. On the other hand the existence of non-Christian elements in the population of a Christian State may render it unavoidable, and in conceivable circumstances even desirable, that civil sanction shall be accorded to unions not permitted by the lofty Christian law of marriage. If, however, it be ever attempted to reason that such civil enactments have any moral

¹ See Chapter IV.

authority or can justify any person in the forum of conscience, a mere survey of the provisions regulating divorce in some of the existing marriage codes seems sufficient to reduce the argument to an absurdity. It will show that in the matter of marriage regulations it is impossible to derive a moral standard from the conflict of the various systems of particular communities.

It will be sufficient to refer to those secular provisions affecting divorce, which are in force in countries where the Anglican Church is at work. These countries will be chiefly¹:

- (i.) The British Isles.
- (ii.) The British Colonies.
- (iii.) The United States of America.
- (iv.) The Indian Empire.

(i.) THE BRITISH ISLES.

(a) *England.*

By the Divorce Act of 1857, modified by subsequent Amendment Acts, it is provided that either husband or wife may obtain a divorce on the ground of the adultery of the other, but when the husband is the offender, the adultery must be accompanied by enormity, cruelty, or desertion. Unnatural crime even without adultery is ground for divorce. When a decree of divorce has been made absolute, the parties are both at liberty to marry again. The offending party may even marry the paramour. A petitioner is not allowed to obtain judgment of divorce, if it appear that he or she has been guilty of conniving at the commission of the offence, or that there is collusion between the parties in order to procure the divorce.²

¹ Dr. Serrell of Lincoln's Inn has been good enough to revise and in great measure supply the information which follows as to the Divorce law of England, Ireland, British North America, Australasia, Massachusetts, and New York; and for the correctness of this information he permits me to use his name. For the remaining statements I can only refer to the authorities cited at the foot of the page.—O. D. W.

² *Connivance* and *collusion* are different. *Connivance* is where one of the spouses is practically a party to the other committing the adultery. *Collusion* is where—there being already a good ground for divorce—the petitioner is in fact in league with the respondent with a view to getting a divorce.—G. S.

Divorce is also barred where the injured party has after the discovery of the offence condoned it by the re-admission of conjugal relations. Further, even in the absence of connivance, collusion, and condonation, which are absolute bars, the Court can and generally does refuse to grant a divorce where the petitioner has been guilty of adultery, cruelty, or desertion, or of wilful neglect or misconduct conducing to the adultery of the other, or of unreasonable delay in seeking redress.¹

(b) *Scotland.*

In Scotland since the Reformation divorce has been admitted in cases of adultery. A statute of 1573 provides further that malicious desertion is a sufficient ground of divorce. After the pronouncement of a decree of divorce, it is not permitted to the offending party to contract a marriage with the paramour, at least if the paramour be named in the decree. Otherwise both parties are at liberty to marry whom they will.²

(c) *Ireland.*

The marriage laws of Ireland regard marriage as indissoluble, and divorce is not by them admitted. In practice, however, divorces are frequently obtained by means of particular Acts of the legislature.³

(ii.) THE BRITISH COLONIES.

(a) *British North America.*

(a.) THE DOMINION OF CANADA.

In New Brunswick and Prince Edward's Island there have, from an earlier date than the English Act of 1857, been laws allowing of divorce for adultery only. In Nova Scotia, adultery and cruelty are grounds of divorce.

With these exceptions there is no law of divorce in the Dominion of Canada. Indeed, the Civil Code of Lower Canada, now the Province of Quebec, expressly declares marriage indissoluble. No law of divorce can now be passed by any of

¹ The Divorce Act, 1857. See also *Stephen's Commentaries*, 11th edition, 1890, vol. ii. pp. 295 *sqq.*, and Browne and Powles, *On Divorce*, 1889, pp. 1-58.

² E. Robertson, Article "Divorce" in *Encyclopædia Britannica*.

³ Browne and Powles, *On Divorce*, 1889, p. 52.

the provincial legislatures¹ and the Dominion Parliament has not exercised its power of legislating on the subject.² Divorces, however, are obtained by means of Acts of the Dominion Parliament: thus the Private Acts of 1893 include seven Divorce Acts.

(β.) NEWFOUNDLAND.³

There is here no law authorizing divorce.

(b.) *Australasia.*

The Australian legislation of 1890 introduces, as will be seen, a new departure in the laws of marriage and divorce in the British Empire, so far as regards Christian subjects of the Crown. Before 1890, Divorce Acts had been passed in all the five colonies of Australia, which in the main followed the English Act of 1857. The dates of these acts are as follows: Victoria, 1864, repealing the earlier act of 1861;⁴ Western Australia, 1863;⁵ Queensland, 1865; South Australia, 1867,⁶ repealing the earlier act of 1858;⁷ and New South Wales, 1873.⁸

The new Victorian Act of 1890 allows of divorce in five cases not covered by the prior law or by the English Act, *viz.*,

(1) Desertion for three years.

(2) Three years' habitual drunkenness with (in the case of the husband) neglect to support the wife, or cruelty to her, or (in the case of the wife) neglect of domestic duties.

(3) Where respondent has been imprisoned for not less

¹ See British North America Act, 1867, 30 Vict. c. 3, s. 91.

² See the *Acts of the Legislatures of the Provinces and of Canada, not repealed by the Revised Statutes*, Ottawa, 1887; for Lower Canada, page 404; for Nova Scotia, pp. 478 and 500; for New Brunswick, pp. 540, 568, and 574; and for Prince Edward's Island, pp. 636, 691, and 710.

³ See *The Consolidated Statutes of Newfoundland*, 1872, and the subsequent Statutes down to and including those for 1893.

⁴ *The Victorian Statutes*, Melbourne, 1875, vol. i. p. 1656.

⁵ *The Statutes of Western Australia*, Melbourne, 1883, vol. i. p. 117.

⁶ *The Queensland Statutes*, Brisbane, 1874, vol. iii. p. 1510.

⁷ *Acts of the Parliament of South Australia* (annual) Adelaide, 1867, 31 Vict. No. 3.

⁸ *Oliver's Statutes of New South Wales*, Sydney, 1879, vol. i. p. 806.

than three years, and is still in prison, for some very grave crime, or (in the case of the husband) where he has been repeatedly in prison, and left the wife habitually without means of support.

(4) Conviction of having within a year attempted to murder petitioner, or assaulted with intent to do grievous bodily harm; or of having repeatedly during that period assaulted and cruelly beaten petitioner.

(5) Applies only to husband respondent, and gives divorce where he has been guilty, since the Act, of adultery in the conjugal residence, or under aggravated circumstances, or of repeated acts of adultery.

Similar Acts have been passed by the legislatures of New South Wales and South Australia, but appear not to have received the royal assent.

The preamble of the new Victorian Act asserts the desirability of granting divorce for additional causes, which, no less than adultery, defeat the objects of marriage. The Act thus introduces into British territory for the first time as applied to the Christian subjects of the Crown the permission of divorce not based upon adultery. Hitherto, if a disputed interpretation of our Lord's words has been accepted, the legislation of the British Empire has been designed, in the case of Christians, to be in accordance with *some* interpretation of His words. In the new Australian Acts His teaching is simply unheeded.

In Tasmania¹ and New Zealand² Divorce Acts are in force which are in substantial accordance with the Divorce Law of England. The dates of the Acts are, Tasmania 1860 and New Zealand 1867.

(iii.) THE UNITED STATES OF AMERICA.

In the United States of America there is no federal law of

¹ *The Acts of the Parliament of Tasmania*, Hobart Town, 1863, vol. ii. p. 213; and see in vol. v. *Index to Statute Law in force in Tasmania*, 1877, p. 10.

² *Statutes of New Zealand*, 31 Vict. Wellington, 1867, No. 94; Curnin's *Index to the Laws of New Zealand*, 6th edition, Wellington, 1886, p. 63.

divorce. Each state imposes its own laws. We may refer to the laws of (a) Virginia, (b) New York, (c) Massachusetts, (d) Connecticut, (e) Louisiana, (f) Pennsylvania, and (g) Illinois.

(a) *Virginia.*

In Virginia the law makes no provision for divorce. Where a divorce is sought, a special Act of the Legislature has to be obtained.¹

(b) *New York.*² (*Law as existing in 1883.*)

In New York divorce is accorded in the case of the adultery of either husband or wife. A decree may be refused by the Court on the grounds of (a) connivance, (β) condonation, (γ) the lapse of a period of five years prior to the institution of a suit, and (δ) the adultery of the plaintiff. After a divorce has been decreed the innocent party may marry again during the lifetime of the other, but the offender is not at liberty to marry so long as the innocent party lives (except on special permission given by the divorce court on proof of certain facts).

(c) *Massachusetts.*³ (*Law as existing in 1882.*)

In Massachusetts divorce may be pronounced—

(a) In case of adultery, cruelty, three years' desertion, drunkenness, abusive treatment, and also, as against a husband, for refusing or neglecting to maintain his wife.

(β) When one of the parties becomes attached to a religious sect or society which proscribes the relation of marriage, and remains so attached for a period of three years, refusing during that time to cohabit with the other party.

(γ) When one of the parties is condemned to hard labour

¹ Naquet, *Le Divorce*, p. 225.

² *The Code of Civil Procedure of the State of New York*, §§ 1756, 1758, and 1761, printed in the *Revised Statutes of the State of New York*, 7th edition, 1883, vol. iv. pp. 350, 351. See also vol. iii. p. 2334.

³ *The Public Statutes of the Commonwealth of Massachusetts*, Boston, 1886, chapter 146, sections 1, 2, 3, 22, 42; pp. 813, 815, 817; and ch. 204, s. 3; p. 1165.

in the State prison, or in any jail or house of correction, whether for life or for a period of five years or more.

(δ) Where a decree for judicial separation has been made under the previous law, and the parties have since lived apart, then after the lapse of three years from the decree divorce may be accorded on the demand of the party in whose favour the decree was granted. Divorce may be accorded to either party after the lapse of five years from the decree of judicial separation.

After a divorce the party in whose favour the divorce has been pronounced may marry again at once, the other party not until after the lapse of two years from the final decree.

(d) *Connecticut*.¹

In Connecticut divorce is admitted on the following grounds:

- (α) Adultery.
- (β) Fraudulent contract.
- (γ) Intentional desertion continued during three years, and accompanied by neglect.
- (δ) Absence without intelligence for a period of seven years.
- (ε) Habitual intemperance.
- (ζ) Intolerable cruelty.
- (η) Imprisonment for life.
- (θ) Condemnation to imprisonment for neglect of conjugal duties, and
- (ι) Generally, acts of a character to render the petitioner unhappy.

(e) *Louisiana*.²

In Louisiana the causes of divorce are—

- (α) Adultery.
- (β) Drunkenness.
- (γ) Excesses (?)
- (δ) Cruelty.
- (ε) Outrages of such a nature as to render cohabitation insupportable.

¹ Naquet, *Le Divorce*, p. 230, quoting *General Statutes*, 1875.

² Naquet, p. 230, quoting the *Civil Code of Louisiana*, 1867, p. 20.

(ξ) Condemnation to a punishment involving infamy.

(η) Voluntary desertion during five years.

When adultery is the cause of divorce the guilty party is not at liberty to marry again during the lifetime of the other.

(f) *Pennsylvania*.¹

In Pennsylvania divorces are granted—

(α) For adultery.

(β) When one of the parties, without valid cause, has deserted the other for two years.

(γ) When the husband by ill-treatment has endangered the life of his wife, or has rendered her condition intolerable by his indignities.

(δ) When one of the parties has been sentenced to not less than two years' imprisonment.

(ε) When the wife, by her ill-conduct, has endangered the life of her husband, or has rendered his position intolerable.

After a divorce has been decreed both parties are at liberty to marry again, but the guilty party in a case of adultery is not permitted to marry the paramour.

(g) *Illinois*.²

In Illinois divorce can be obtained—

(α) For impotence dating from before the marriage and continuing after it.

(β) When one of the two parties is bound by a former marriage.

(γ) For adultery.

(δ) For the intentional desertion of either party by the other without valid cause.

(ε) For habitual drunkenness continued for two years.

(ξ) For an attempt by one of the parties on the life of the other by poison or otherwise.

(η) For extreme and repeated cruelty.

(θ) For felony or crime involving infamy.

¹ Naquet, p. 231, quoting the *Digest of the Laws of Pennsylvania*, 1862, 9th edition, p. 345.

² Naquet, p. 231, quoting the *Revised Statutes of the State of Illinois*, 1874.

The divorce laws of the other States of the American Union will be found analogous to one or other of these types.

(iv.) THE INDIAN EMPIRE.

The law of marriage and divorce in India is personal, not territorial. There is no one divorce law in force either in the whole Indian Empire, or in any part of it. On the other hand, the marriage law of every community, religious or social, which has in practice possessed a distinctive marriage law, is recognised and upheld by the British Courts. The laws of India in the matter of divorce will be referred to at some length in the chapter on marriage outside Christianity (ch. v.) They may be summarised here as follows:—

(a) *Hinduism.*

(a) *Hindus generally.*—With the great body of the Hindus divorce is not admitted. The woman is bound even after the death of her husband. To the husband, on the other hand, divorce is practically open in the supersession of the wife by marriage with a second wife.

(β) *Polyandrous tribes.*—In the case of the tribes of the Himalayas and of South India, which practise polyandry, the practice is recognised by the law. It necessarily carries with it great liberty of repudiation.

(b) *Islam.*

(a) *Ordinary Divorce.*—Among all Mussulmans, Sunni as well as Shia, entire liberty of divorce is accorded by the law to the husband. For a regular divorce the husband should recognise certain limitations, but for a valid divorce the mere threefold repetition of the words *I divorce thee* is sufficient.

(β) *Temporary Marriages.*—Among the Shias there obtains a system of temporary marriage, by which two persons contract to be husband and wife for a fixed term, divorce or separation ensuing at the end of the term by the conditions of the contract.

(c) Christianity.

The Christian law of divorce is analogous to that of England.

We have now before us a survey of the law of divorce in (i.) England, Scotland, and Ireland, (ii.) The British Colonies, (iii.) The United States of America, and (iv.) The Indian Empire. The survey presents an appalling variety of recognised practice. It is not possible to maintain that this variety of practice represents any unity of principle. In principle as in practice the various laws of divorce are manifoldly hostile to one another. It is not in such a maze that we can find moral authority and the satisfaction of conscience. We conclude again that marriage must be of Divine and not merely of human institution.

The present work is a treatise on the Divine Laws of Marriage. Starting from the principle that marriage was instituted by God, it will be concerned with the laws which are involved in the Divine institution. It will have no concern with laws of merely human origin, whether civil or ecclesiastical.

CHAPTER II

OF THE THREE CHARACTERS OF MARRIAGE AS FOUND IN HISTORY

The Three
Characters.

MARRIAGE is of Divine institution, and as Divinely instituted, it had a character which man had no authority to change. But with the rebellion and the Fall of man, there came a change over his whole being, and over all his relations, and accordingly, not least, there came a change in the character of the estate of marriage. Once again, in the Redemption of man, there came a restoration of the whole being, and a new life in all rightful relations, and accordingly, not least, there came a new life in the estate of marriage. It is thus the fact that the union of the sexes in the human race has been so conditioned by circumstances that in the actual history of mankind it has presented three markedly different characters. The three stages in which marriage has thus been found are (1) Marriage in the state of Innocence and before the Fall, (2) Marriage after the Fall, and outside Christianity, and (3) Holy or Christian Matrimony.

1. *Marriage in the State of Innocence and before the Fall.*

1. Marriage
in the
state of
Innocence.

This was marriage as originally instituted by Almighty God. "Marriage," as says the introductory address of the English Marriage Service, "is an honourable estate instituted of God in the time of man's innocency." As so instituted it was the marriage of one man with one woman, and it was indissoluble. Polygamy was excluded, for in the original institution only one woman was called into being. Divorce was excluded, for our

Lord, speaking of the later facility of divorce, tells us expressly that "from the beginning it was not so." For the righteous maintenance of this Divinely instituted union the grace of God's blessing continually abiding with the persons provided a sufficient support.

2. *Marriage after the Fall and outside Christianity.*

This was the estate of marriage, not as God had instituted it, but as perverted man maintained it. Marriage is no longer recognised as being necessarily with one partner only, or as being indissoluble by divorce. God had not altered His institution, but having regard to the hardness of heart of those who were separated from Himself and were no longer sustained by the habitual assistance of the Divine grace, we find that even God did not directly interpose prohibitions of polygamy and divorce during the time of estrangement, although incestuous unions, speaking generally, were at all times the objects of direct prohibition. It would seem that the evils of polygamy and divorce were evils which were suffered lest haply worse should come so long as every man living was as yet unregenerate, and the best of men were but waiting for the redemption of the race. Evils which would be sufficient to estrange from a state of grace were proportionately insignificant in a state of sin.

2. Marriage after the Fall, and outside Christianity.

3. *Holy or Christian Matrimony.*

In the reconciliation of man to God in Christ by the power of the Holy Ghost the moral law is revived in its strictness. It is not open to one who is a member of the Body of Christ, and whose own body is the temple of the Holy Ghost, to contract any sexual union except the union of marriage as originally instituted by God. If he do contract such an irregular union, he commits sin and falls back into a condition of alienation from God. Accordingly in the Christian Church marriage becomes once more the exclusive union of two persons with one another, precluding polygamy; and once more also it becomes an indissoluble union, subject indeed to

3. Holy or Christian Matrimony.

a provision not expressed in the narrative of the original institution, the provision "till death them do part."

To enable husband and wife to live up to the requirements of this high ordinance, notwithstanding the tendencies of the fallen nature which they have inherited, they have the strengthening and life-giving power of the Holy Spirit, Who dwells in their bodies as in His temples, and makes their union to be holy. This indwelling presence of the Holy Spirit, added to the mystical or sacramental character of the original ordinance, in which a pervading union of the whole being was associated with the copula, gives to Holy or Christian Matrimony its Sacramental character in the Christian sense. Christian marriage is still the original ordinance, but it is the original ordinance transfigured by the indwelling presence of the Holy Spirit, as conferred in Baptism.

In this chapter the three characters of marriage as found in the history of the race have been thus briefly sketched without attempt at proof or reference to authority, because the true understanding of the marriage-bond and of the difficulties which surround it is in a high degree dependent upon a clear grasp of this threefold distinction. The subject will be dealt with more in detail in the chapters which follow.

CHAPTER III

OF MARRIAGE IN THE STATE OF INNOCENCE

GOD instituted marriage “in the time of man’s innocency.” Original Institution.
Our information with regard to marriage prior to man’s Fall is necessarily meagre because confined to the few notices in Holy Scripture, but there is enough to furnish some highly important particulars.

1. *The Objects of Marriage.*

The objects of marriage, as instituted before the Fall, are stated in Holy Scripture to be 1. Objects.

(a) That man should not be alone, but should have a help meet for him.

Genesis ii. 18 :

And the LORD God said, *It is not good that the man should be alone ; I will make him an help meet for him.*

(b) That God “might seek a godly seed.”

Malachi ii. 15 :

And did he not make one ? Yet had he the residue of the Spirit. And wherefore one ? That he might seek a godly seed.

Genesis i. 27, 28 :

So God created man in his *own* image, in the image of God created he him ; male and female created he them.

And God blessed them, and God said unto them, Be fruitful, and multiply, and replenish the earth, and subdue it.

[The third object of marriage, as commonly stated, may not have been regarded in the original institution.

(c) That sin might be avoided.

1 *Corinthians vii. 2 :*

διὰ δὲ τὰς πορνείας ἕκαστος τὴν ἑαυτοῦ
γυναῖκα ἔχεται, καὶ ἑκάστη τὸν ἴδιον
ἄνδρα ἔχεται.

2 Nevertheless, *to avoid* fornication,
let every man have his own wife, and
let every woman have her own husband.]

The Prayer Book statement of "the causes for which Matrimony was ordained" is appended for comparison.

"First, It was ordained for the procreation of children, to be brought up in the fear and nurture of the Lord, and to the praise of His holy Name.

"Secondly, It was ordained for a remedy against sin, and to avoid fornication ; that such persons as have not the gift of continency might marry, and keep themselves undefiled members of Christ's body.

"Thirdly, It was ordained for the mutual society, help, and comfort, that the one ought to have of the other, both in prosperity and adversity."

2. *The Copula (copula carnalis).*

2. The Copula.

The most marked feature of the union was that it was an union in one flesh.

Genesis ii. 23, 24 :

And Adam said, This *is* now bone of my bones, and flesh of my flesh : she shall be called Woman, because she was taken out of Man. Therefore shall a man leave his father and his mother, and shall cleave unto his wife : and they shall be one flesh.

Our Lord's references to the Divine institution of marriage are here again cited.

S. Matthew xix. 4-6 :

4 And he answered and said unto them, Have ye not read, that he which made *them* at the beginning made them male and female,

5 And said, For this cause shall a man leave father and mother, and shall cleave to his wife : and they twain shall be one flesh ?

6 Wherefore they are no more twain, but one flesh. What therefore God hath joined together, let not man put asunder.

S. Mark x. 6-9 :

6 But from the beginning of the creation God made them male and female.

7 For this cause shall a man leave his father and mother, and cleave to his wife ;

8 And they twain shall be one flesh : so then they are no more twain, but one flesh.

9 What therefore God hath joined together, let not man put asunder.

GOD, then, in the very institution of marriage, said, "They twain shall be one flesh." Adam recognised the analogy between the oneness of flesh of the married state and the oneness resulting from the original formation of woman out of man. Our Lord gives us to understand that the marriage union now is one flesh by reason of the oneness of flesh of

God's institution in Paradise—"Wherefore they are no more twain, but one flesh." This specially intimate union of the flesh in the Divine institution is pre-eminent among the reasons which exclude divorce. "What *therefore* God hath joined together, let not man put asunder."

The passages quoted above to shew that the procreation of children was one of the Divine objects in the institution of marriage in the state of innocence indicate the same intimate union in one flesh. There is no other means of multiplying the race known to man.

Notwithstanding these very clear indications, there has been considerable difference of opinion in the Church as to whether the copula found place in Paradise. S. Thomas Aquinas states without reserve that it did not.¹

The point is important for the very argument to which S. Thomas applies it. It goes to prove that the copula is or is not of the essence of marriage.

3. *The Exclusion of Polygamy.*

As God instituted marriage polygamy was excluded. Only ^{3. The Exclusion of Polygamy.} Eve was called into being to be the wife of Adam, nor was a second wife found either necessary or expedient, whether for society, or for the procreation of children, or for the avoidance of sin.

4. *The Exclusion of Divorce.*

Divorce was not admitted. Our Lord expressly states, when referring to the facility of divorce accorded by the Mosaic ^{4. The Exclusion of Divorce.} code, that "from the beginning it was not so."

¹ S. Thomas Aquinas, *Summa Theologiæ*, Supp. Quæ. 42, Art. 4, "In paradiso fuit matrimonium, sed ibi non fuit carnalis copula. Ergo coniunctio carnalis non est de integritate matrimonii."

CHAPTER IV

OF THE FALL; AND OF THE CORRUPTION OF ALL FLESH

A. THE FALL.

The Fall. **M**AN'S relations to GOD were thrown entirely out of gear by that pregnant act of disobedience from which came the Fall. No longer at one with GOD, his life was a life broken off, and because broken off, no better than a living death. No longer supported by the supernatural assistance of the Divine grace, he was no longer sufficiently strong for what lay before him. Broken off from GOD, and unsupported by GOD'S grace, his own composite nature, missing its guiding power, could no longer act harmoniously even within itself. The passions rose in tumultuous rebellion against the higher nature, which, in the absence of supernatural assistance, found itself all too weak to control them. The passions therefore conquered, and brought about that "corruption of all flesh," which was one of the two enormities for which GOD in His wisdom drowned the world, and for which at subsequent periods He visited many nations, as in the notable instances of the Canaanites and the cities of the plain.

This treatise, as a treatise of Christian theology, will assume the truth of the narrative of the Fall, and of the blight of darkness and of death which as a consequence settled upon the human race. It will be necessary, however, to enter here upon the differences as to the theology of the Fall which have separated Christians among themselves. It need hardly be said that the theology of the Fall is of the most fundamental character, and that the theological views of any Christian will

be necessarily coloured, and indeed guided throughout, by the position which he takes up upon this subject. There are two main theories of the Fall, which we will call (1) the Catholic and (2) the Calvinistic. The Catholic doctrine, by which is meant the doctrine common to the historic Churches of Christendom, teaches indeed with entire definiteness that at that moment in time in which the first sin completely assumed its character of deadly rebelliousness man ceased to be in a state of grace and life, and commenced to be in a state of sin and death; and that, under God's justice, notwithstanding the merciful guidance which enabled God-fearing men to live as those who had only to wait for the redemption of the race, yet as regards the actual condition of all men during the long succession of years which elapsed before the fulness of the time was come, all men without exception were in a state of spiritual death. The atonement was not yet; God and man were not at one; there was a veil between them.

The
Catholic
doctrine.

So far the Catholic and the Calvinist doctrines are in accord, but the essential difference appears when we ask what was the character of that state of sin and death in which man lived after the Fall? It may be well illustrated in the following way: A man walking perilously close to the edge of a deep pit falls in, and, having fallen, lies terribly injured at the bottom, unable to extricate himself.¹ The Catholic says that, terribly injured as the man is, there is a Great Physician who can heal him, and, taking him by the hand, can lead him forth out of that pit of misery and horror, and place him once more in the full light of the Divine presence and in the full life of the Divine indwelling. The Calvinist, however, says that the man as he lies at the bottom of the pit is so mangled and shattered that it is beyond possibility to restore him;² that even God can only remedy the consequences, and not the fact. And that accordingly, when our Lord came, what He did was not to infuse life so that those bones should live, but to impute the

The
Calvinist
doctrine.

¹ See a valuable article in the *Christian Remembrancer* of Jan. 1863, "Calvinism and Modern Doubt."

² Compare the *Formula Consensus*: "Intima, pessima, profundissima (instar enjusdam abyssi) inscrutabilis et ineffabilis corruptio totius nature humane."

merits of His own most holy life and death to the unholy sinner, who could never by any power of earth or heaven become holy in himself again. The salvation of man therefore, according to this theology, consists not in the restoration of holiness in the sinner, but in the artificial ascription of our Lord's holiness to a person who continues and will continue pervadingly sinful, and in whom holiness cannot dwell.¹

In the Calvinist system no place for sacramental grace.

It will be clear, upon reflexion, that the Calvinistic system has no place for sacramental grace in the Catholic sense. Neither Baptism nor the Holy Eucharist can supply a spiritual life and an indwelling holiness to a man whose ruin is beyond repair. All that can be looked for is that our Lord Jesus Christ, by an act of external mercy, may ascribe to him a holiness which was never his, and so save him from the wrath to come. Similarly in the case of Holy Matrimony. The Catholic doctrine of Holy Matrimony, as we find it in the Christian Church, may be said to be that the Holy Spirit, dwelling in the souls and in the bodies of Christians, restores in them, when they are united in marriage, the righteousness of the original ordinance of marriage, and, farther, transfigures that ordinance, so that it is now no longer merely the marriage of Paradise, with its mysterious and, so to speak, sacramental character, but is that mystery transformed and raised to a higher level, corresponding to the higher level of life which is the prerogative of the redeemed. Thus Holy Matrimony in the Christian is said to be sacramental in a new and specially Christian sense. The Calvinist teaches that men are incapable of such indwelling holiness as the Catholic claims, and that there is therefore no scope for sacraments as the channels whereby such holiness is given and maintained. There is, he says, an imputation of our Lord's merits to be hoped for, but that is independent of all sacraments. For the rest marriage remains what it ever was—a merely natural union.

This treatise will discard the Calvinist doctrine, and accept

¹ The writer would guard himself against seeming to condemn any of those who in the present day, with very different views, may style themselves Calvinists. It is the doctrine as he has stated it which alone he condemns ; but that doctrine, he believes, may fairly be called the Calvinistic doctrine.

that of Catholic Christianity. It will assume that the Christian is not merely accounted righteous because of merits which are in no way his, but that he is actually restored to holiness by the power of the Holy Spirit dwelling in his soul and in his body. From this assumption it will follow that by the indwelling of the Holy Spirit there comes a change in the character of all His relations, and not least in the character of the Divine institution of marriage.

We may now enquire what could be the character of marriage when man was in a state of sin and death. It was not the pure and holy union of Eden, nor was it the sacramental union of the redeemed. It was the permitted union of persons in a state of sin and death. It was therefore an union in which as on the one hand the fulfilment of the Divine regulations with regard to marriage could not give to the estate itself the pure and holy character which rightly belonged to it, so on the other the disregard of those regulations, as in the cases of polygamy and divorce, could not transfer the persons from the state of grace into the state of sin, inasmuch as they were in the state of sin already. What we accordingly find is, that with regard to certain transgressions of the law of marriage God as it were stands by, neither approving them nor adding to existing condemnations; but that with regard to other and more serious delinquencies the Divine condemnation is very clearly pronounced. In a state of sin some acts which were not devoid of a sinful character were yet relatively less important; and such transgressions might for the time be passed by for the hardness of men's hearts, and lest worse should come. Polygamy and divorce seem to have been suffered in this way, while, speaking generally, unions of an incestuous character were repeatedly condemned. This teaching, that God "winked at" what was in fact a declension from His own ordinance, is abhorrent to many minds, as appearing to give the Divine sanction to the theory that expediency is the guide of morals; but consideration makes it abundantly clear that inasmuch as the lives of all men living in the time which elapsed between the Fall and the Redemption were alienated from God and under the cloud of sin, waiting for a redemption

The
Catholic
doctrine
assumed.

Marriage
after the
Fall was
the
permitted
union of
persons in
a state of
sin.

Con-
cessions.

Our Lord
had
afterwards
to raise
the whole
moral law.

which had not yet been effected, there was in fact no such thing as holiness of life or living conformity with the Divine pattern in that high sense in which Christians understand these and similar expressions. Even those "after GOD's own heart" still presented to GOD an alienated humanity, and the lower moral standard which it implies; and it is not only in the sphere of the laws of marriage, but in the whole realm of morals, that our Lord Jesus Christ found it necessary to raise and tighten the moral law. "Ye have heard that it was said to them of old time, Thou shalt not kill; and whosoever shall kill shall be in danger of the judgment: but I say unto you, that every one who is angry with his brother shall be in danger of the judgment; and whosoever shall say to his brother, Raca, shall be in danger of the council; and whosoever shall say, Thou fool, shall be in danger of the hell of fire."¹ "Ye have heard that it was said, Thou shalt not commit adultery: but I say unto you, that every one that looketh on a woman to lust after her hath committed adultery with her already in his heart."² "Again, ye have heard that it was said to them of old time, Thou shalt not forswear thyself, but shalt perform unto the Lord thine oaths: but I say unto you, Swear not at all; neither by the heaven, for it is the throne of GOD; nor by the earth, for it is the footstool of His feet; nor by Jerusalem, for it is the city of the great King."³ "Ye have heard that it was said, An eye for an eye, and a tooth for a tooth: but I say unto you, Resist not him that is evil: but whosoever smiteth thee on thy right cheek, turn to him the other also."⁴ "Ye have heard that it was said, Thou shalt love thy neighbour, and hate thine enemy: but I say unto you, Love your enemies, and pray for them that persecute you."⁵ It is, in fact, true to say that the moral law was only partially asserted so long as the supernatural life was withheld, but that when the supernatural life was accorded by the indwelling of the Holy

¹ S. Matt. v. 21, 22 (Revised Version).

² S. Matt. v. 27, 28 (Revised Version).

³ S. Matt. v. 33-35 (Revised Version).

⁴ S. Matt. v. 38, 39 (Revised Version).

⁵ S. Matt. v. 43, 44 (Revised Version).

Ghost it became a condition of the maintenance of that life that the moral law should be maintained in its fulness.

It is however felt by some that, while that general principle may be true which asserts that in the state of sin induced by the Fall a less perfect moral law was enjoined in practice than is admissible in the Christian, yet the sufferance of such declensions from the law of marriage as polygamy and the facility of divorce is a sufferance too serious in itself, and too little supported by any probabilities of worse behind, to admit of its acceptance. To meet this difficulty it is necessary to enquire into the nature of that "corruption of all flesh," into which man has shewn himself so prone to fall. The enquiry is distressing and humiliating; but if it clear the ground as regards the great principles which underlie the history of the estate of marriage, it is worth the making.

B. THE CORRUPTION OF ALL FLESH.

The sin of our first parents, which has been followed by such calamitous consequences, was not a sin of sexual appetite; but no sooner was the rightful balance of human nature disturbed than the sins of sexual appetite became in a marked degree the source of further sin and further degradation. It was on the occasion of the lust of the "sons of God" for the "daughters of men," however the passage may be interpreted, that God said, "My Spirit shall not always strive with man for ever, for that he also is flesh" (or, "for in their going astray they are flesh").¹ Two reasons again are assigned for the punishment of the Deluge; viz., (1) the corruption of all flesh, and (2) violence. "And the earth was (1) corrupt before God, and (2) the earth was filled with violence."² The corruption is explained in the following verse: "And God saw the earth, and behold it was corrupt; for all flesh" (*basar*) "had corrupted his way upon the earth."³

The corruption of all flesh.

Notices in Holy Scripture.
(*a*) Before the Deluge.

Notwithstanding the lesson of the Deluge, the corruption of the flesh is soon found at work again, and again followed by signal punishments. The awful catastrophe which overtook the cities of the plain was the immediate result of a gross

(*b*) After the Deluge.

¹ Gen. vi. 3.

² Gen. vi. 11.

³ Gen. vi. 12.

particular instance of a fleshly sin against nature which was evidently habitual.¹ The reason which is assigned for the destruction of the Canaanites is that they have been guilty of fleshly corruption. In the twentieth chapter of Leviticus, at the close of a long enumeration of fleshly sins, chiefly (1) sins of incest, and (2) sins against nature, GOD goes on to command, "Ye shall therefore keep all my statutes, and all my judgments, and do them: that the land, whither I bring you to dwell therein, vomit you not out. And ye shall not walk in the customs of the nation, which I cast out before you: for they did all these things, and therefore I abhorred them."²

The fleshly corruption which overtook mankind after the Fall is not less apparent from the instances in which it is mentioned without special reference to punishment, than in the examples which Divine mercy has singled out as warnings. Polygamy is already found in the case of Lamech, only the sixth in descent from Adam. Of him we are told that he married Adah and Zillah.³ Abram married his half-sister Sarai, and the narrative gives no indication of any sense of wrong in the matter. It is indeed recorded that Sarai was not Abram's uterine sister, but only his father's daughter.⁴ Lot's daughters do not appear to have been overwhelmed by any sense of shame, either in the anticipation or in the retrospect of their incestuous unions with their father, although they seem to have known that he at least, when in his sober senses, would not readily have fallen in with their wishes. Nahor married his niece Milcah, the daughter of his brother Haran.⁵ Jacob married two sisters.⁶ Amram, the father of Moses and Aaron, married Jochebed, his father's sister.⁷

There are indeed indications in the practices of the family of Abraham that those practices had their root in a moral condition, whether in the actual family or tribe from which Abraham came, or in the peoples round about them, which deeply shared the degradation of the corruption of all flesh. The marriage of Abram with Sarai was a marriage in exactly

¹ Gen. xix. 5.

² Lev. xx. 22, 23.

³ Gen. iv. 19.

⁴ Gen. xx. 12.

⁵ Gen. xi. 29.

⁶ Gen. xxix. 23, 28.

⁷ Exod. vi. 20.

the same relation as that exemplified at a later date by the sin of Amnon with Tamar, a sin in that case regarded with no little horror.¹ Yet in the case of the union of Abram and Sarai there is no sense of sin or expression of penitence. In calling the father of the chosen race to come out and to be separate God does not seem to have required that he should in a moment shake himself free from the conventional standard of morals which commended itself to the men about him. Yet it is worthy of remark that God suffered the union of Abram and Sarai to remain unfruitful during all the years of natural fruitfulness, a childlessness which is the very curse assigned by the Mosaic code to another case of the marriage of near kin; and that when at last it pleased God, in making a covenant with Abraham, to promise him seed from Sarah, it was not till she was ninety years old, and "it had ceased to be with her after the manner of women." It was not therefore till supernatural intervention was an obvious need, and it was also not till her personality had, as it were, been transformed and sanctified by the Divine imposition of the name of Sarah in place of that of Sarai. Again, stress laid upon relationship through the mother, and carelessness regarding relationship through the father, are now familiar to historical students as indications of a moral condition in which paternity is difficult to assign. Abraham says of his wife that "she is the daughter of my father, but not the daughter of my mother."² Nahor married the daughter of his *brother* Haran.³ Amram married his *father's* sister.⁴ If such a conventional tone of morality be understood, the sin of Lot's daughters becomes more intelligible.⁵ When Sarai found herself barren she asked Abraham to take Hagar, not primarily that he might have the consolation of offspring, which she had not been able to afford him, but that *she* might have such offspring. "I pray thee, go in unto my maid; it may be that I may obtain children by her."⁶ Evidently the customary law of the tribe assigned

¹ 2 Sam. xiii. Yet even Tamar says, "This evil in sending me away is greater than the other that thou didst to me."

² Gen. xx. 12.

³ Gen. xi. 29.

⁴ Exod. vi. 20.

⁵ Gen. xix. 32.

⁶ Gen. xvi. 2.

relationship in some way through the women. If there was any question of adoption, the adoption was to be by the wife rather than by the husband;¹ and the recognised method by which such adoption was effected was that the wife should call upon the husband to become the father of a child by some slave-woman who was the property of the wife. Here again we have evidence of the same low moral condition—a condition which probably corresponded with the prevailing sentiment of the tribes around. The custom may have been brought by Terah's family from Ur of the Chaldees, from that ancient Shamiro-Accadian race² whose marvellous story is now being spelled out from the monuments; or again, less probably, in view of Isaac's feeling of aversion to the daughters of Heth, it may have been adopted in Haran. In any case it seems to tell its tale. The Levirate custom, which will be considered in the next chapter, appears also to have its roots in a low moral condition.

Holy Scripture therefore contains many notices of the corruption of all flesh.

Outside
Holy
Scripture.

Outside the record of Holy Scripture a considerable number of facts have now been brought to light which go to shew that promiscuity and polyandry in various forms, as also incestuous unions and unnatural crimes, have been very widely practised by the various races of mankind.

(a) *Polyandry.*

Even in the history of the great Aryan stock we find traces of this. Thus in the *Mahabharata*, one of the principal Indian epics, the five Pandava princes are married to one wife—Draupadi. "How is it," asks Professor Max Müller, "that the five Pandava princes, who are at first represented as receiving so strictly Brahmanic an education, . . . could afterwards have been married to *one* wife? This is in plain opposition to Brahmanic law, where it is said, 'They are many wives of one man; not many husbands of one wife.' Such a contradiction

¹ See also Gen. xxx. 3, 8, 13.

² For the Shamiro-Accadian race, see Sayce, *The Ancient Empires of the East*, 1884, pp. 91, *sqq.*

can only be accounted for by the admission that in this case epic tradition in the mouth of the people was too strong to allow this essential and curious feature in the life of its heroes to be changed."¹ "In other words," says McLennan, "we have here the tradition that the races among whom the five principal heroes of the *Mahabharata* were born and fostered practised polyandry."² Another passage of the *Mahabharata*³ describes the early morality of the Aryans in these terms: "Women were formerly unconfined, and roved about at their pleasure, independent (within their respective castes). Though in their youthful innocence they abandoned their husbands, they were guilty of no offence; for such was the rule in early times. This ancient custom is even now the law for creatures born as brutes, which are free from lust and anger. This custom is supported by authority, and is observed by great Rishis, and it is still practised among the northern Kurus."

Dr. Muir, in a note, refers to the legend that the practice of promiscuous intercourse was abolished by a certain Svetaketu, son of the Rishi Uddalaka, who was incensed at seeing his mother led away by a strange Brahman, and who therefore successfully endeavoured to establish the rule of conjugal fidelity.

In India what was once apparently the rule is now the exception; but the cases of exception which have survived, or which human depravity has since developed, are remarkable. In nearly all the Himalayan and sub-Himalayan districts we find the same limited but incestuous form of polyandry which was practised by the Pandavas; that is to say, all the brothers of a family, without restriction of numbers, share a wife among them. The Maleres and Poleres of the Malabar coast in southern India are stated to have the same custom. A ruder but less incestuous form of polyandry is found among the Nairs, where the husbands are not necessarily brothers. Hamilton says that a Nair woman can have as many as twelve husbands; and he further states that a Nair man may find

¹ Max Müller, *A History of Ancient Sanskrit Literature* (1859), p. 47.

² McLennan, *Studies in Ancient History* (1886), p. 119.

³ Dr. Muir, *Sanskrit Texts* (1860), part ii. p. 336.

place in several combinations of husbands; that is to say, he may be connected with several wives. This approaches to mere promiscuity.

Not to dwell too long upon this painful subject, it will suffice to quote the following rapid survey from Mr. McLennan's *Primitive Marriage*, a work which brings together much valuable material, though the conclusions which the author deduces from it are more than questionable:

"Let us first see what is the area over which polyandry now prevails. It prevails universally in Tibet, and is common in the Himalayan and sub-Himalayan regions adjoining Tibet, in the valley of Kashmir, among the Spiti in Ladak; in Kistewar and Sirmor. It occurs among the Telingese; in the Sivalik mountains, and in Kasia. There are unmistakeable traces of its existence till recently in Gurhwal, Sylhet, and Cachar. Farther south in India we find polyandry among the Tudas of the Nilgherry Hills, the Coorgs of Mysore, and the Nairs, the Maleres, and Poleres of Malabar. We find it off the Indian coast in Ceylon, and going eastward, strike on it as an ancient though now almost superseded custom in New Zealand, and in one or two of the Pacific Islands. Going northward, we meet it again in the Aleutian Islands; and taking the continent to the west and north of the Aleutians, we find it among the Koryaks to the north of the Okhotsk Sea. Crossing the Russian Empire to the west side, we find polyandry among the Saporogian Cossacks. We thus have traced it at points half round the globe. This is not all however. Polyandry is found in several parts of Africa and of America. We have the authority of Humboldt for its prevalence among the tribes on the Orinoco, and he also vouches for its former prevalence in Lancerota, one of the Canary Islands.¹ From ancient

[¹] Turner's *Tibet*, 1800, p. 348; Vigne's *Kashmir*, 1842, vol. i. p. 37; Cunningham's *Ladak*, 1854, p. 306; Buchanan's *Journey*, etc., 1807, vol. ii. pp. 408-412; Archer's *Upper India*, 1833, vol. i. p. 185; Latham's *Descriptive Ethnology*, 1859, vol. i. pp. 24-28, vol. ii. pp. 398, 496, 462; Humboldt's *Personal Narrative* (Williams's Translation), 1819, chap. i. vol. i. p. 84, and vol. v. part ii. p. 549; Hamilton's *New Account of the East Indies*, 1727, vol. i. pp. 274, 308; Reade's *Savage Africa*, p. 43; Erkman's *Travels in Siberia*, vol. ii. p. 531; *Marriage Ceremonies*, by Seigneur Gaya, 1698, pp. 70, 96; Tennent's *Ceylon*, 1859, vol. ii. p. 429; *Legend of Rupe*; Grey's *Polynesian Mythology*, 1854, p. 81; *A Summer Ramble in the Himalayas*, 1860, p. 202; Fisher's *Memoir of Sylhet*, etc., in *Journal of Asiatic Soc. Bengal*, vol. ix. p. 834; *Asiat. Res.* vol. v. p. 13. Our information regarding the Saporogian Cossacks has been obtained from Sir John McNeill.

history we learn that polyandry at one time existed over even a greater area. Traces of it remained in the time of Tacitus among the Germans. And while in certain cantons of Media, according to Strabo,¹ polygynia was authorised by express law, which ordained every inhabitant to maintain at least seven wives, in other cantons the opposite rule was in force—a woman was allowed to have many husbands, and they looked with contempt on those who had less than five. Caesar informs us that in his time polyandry prevailed among the Britons.² We find direct evidence of its existence among the Piets in the Irish Nemius,³ not to mention traces of it in the Pictish Laws of Succession. Further, we find traditions of it among the Hindus,⁴ especially among the Rajputs. And we find it among the Getes of Transoxiana (the Yuti or Yuechi of the Chinese historians).⁵

It is, therefore, only too certain that among the many forms of the corruption of all flesh the sinful practice of polyandry has been found to prevail among various peoples, and at various times.

(b) *Promiscuity.*

A lower depth is reached in the practice of merely promiscuous intercourse. Among ancient examples of this gross habit may be mentioned the Massagetae, the Agathyrsi, and the Spartans. For modern examples Mr. McLennan may again be quoted:

“It may be well to append some modern examples of promiscuity, and of practices which have the same effect in rendering uncertain male parentage. The Ansarians have their wives in common; the people of Martawan, of the tribe of Ansarians, let out their wives and daughters.⁶ The Keiaz (Paropamisans) lend their wives to their guests;⁷ so do the Eimauk (Caulbul);⁸ so, we are informed, do the Kandians. The Mpongme (Africa) lend wives;⁹ so do the Koryaks

[¹] Lib. ii. p. 798.

[²] *De Bello Gallico*, lib. v. c. 14.

[³] Appendix li.

[⁴] Tod's *Annals, etc., of Rajasthan*, 1829, p. 48.

⁵ McLennan, *Studies in Ancient History*, 1886, pp. 97-99.

[⁶] Volney, *Travels*, chap. xxvii.

[⁷] Latham, *Des. Ethn.* vol. ii. p. 246.

[⁸] Elphinstone, 1815, p. 483.

[⁹] Reade, *Savage Africa*, p. 259.

and Chukchi, who lend out daughters as well (North-east Siberia).¹ The Koryaks are also polyandrous. The same disregard of conjugal fidelity appeared in Caindu, Cascar (Turkestan, Tartary), and in Cumana.² We find it now among the Aimaks.³ It was customary in Kamul.⁴ Montesquieu⁵ remarks on the licentious wantonness of the women of Patan, against which the men had to adopt measures of self-protection. Mr. Wilson, of Mussoorie, in an admirable report on the Puharies of Gurhwal,⁶ says of the Gungarees and Perbuttees: 'Their immorality is something incredible—chastity being little appreciated even where it does exist.'⁷

In the same connexion may be quoted a passage from Mr. Herbert Spencer's *Principles of Sociology*:

"In Benguela (Congo), according to Bastian, poor maidens were led about before marriage, in order to acquire money by prostitution. From Herrera we learn that the Mexicans had an identical custom: 'Parents used, when the maidens were marriageable, to send them to earn their portions, and accordingly they ranged about the country in a shameful manner till they had got enough to marry them off. Bancroft says the ancient people of the Isthmus of Darien thought 'prostitution was not infamous; noble ladies held as a maxim that it was plebeian to deny anything asked of them'—an idea like that of the Andamanese, among whom good manners are thought to require concessions of this kind.'⁸ Equally strange are the marital sentiments displayed by certain peoples, both extant and extinct. Of the Assanyeh Arabs, whose marriages are for so many days in the week, usually four, Petherick tells us that during a preliminary negotiation the bride's mother protests against 'binding her daughter to a due observance of that chastity which matrimony is expected to command for more than two days in the week'; and there exists on the part of the man a duly adapted sentiment; the husband, allowing the wife to disregard all marital obligations during the off days, even considers an intrigue with some other man as a compliment to his own taste. Some of the Chibchas of ancient Central America betrayed a kindred feeling. Not simply were they indifferent to

[¹] Erkman, vol. ii. p. 531; and *vide* Cochrane's *Journey*, 1825, vol. i. p. 336.

[²] Gaya, p. 104; Marco Polo.

[³] *Des. Ethno.* vol. i. p. 333.

[⁴] Marco Polo, Bohn's edition, p. 110. [⁵] B. 16, ch. viii.

[⁶] *A Summer Ramble in the Himalayas*, p. 182.

[⁷] McLennan, *Studies in Ancient History* (1886), Note on p. 96.

[⁸] As regards the Andamanese this statement is now denied. O. D. W.

virginity in their brides, but if their brides were virgins 'thought them unfortunate and without luck, as they had not inspired affection in men; accordingly they disliked them as miserable women.'"¹

It is sufficient to merely refer to that vast population of fallen women who have ministered to the vice of men in all ages and in all lands, not excluding the countries of Christendom.

Promiscuity, then, in various forms, is one of the phases of the corruption of all flesh.

(c) *Incestuous practices.*

Those incestuous practices which appear to have been the main cause of God's punishment of the Canaanites have not failed to recur in other communities and at other periods. Mr. Herbert Spencer may again be quoted:

"The Chippewayans 'cohabit occasionally with their own mothers, and frequently espouse their sisters and daughters'; and Langsdorff asserts the like of the Kadiaks. So, too, among the Karens of Tenasserim, 'matrimonial alliances between brother and sister, or father and daughter, are not uncommon.' To these cases from America and Asia may be added a case from Africa. To keep the royal blood pure, the kings of Cape Gonsalves and Gaboon are accustomed to marry their grown-up daughters, and the queens marry their eldest sons.

"Incest of a kind that is a degree less shocking is exemplified by more numerous peoples. Marriage between brother and sister was not prohibited by the 'barbarous Chechemecas' and the 'Panuchese.' The people of Cali 'married their nieces, and some of the lords their sisters.' 'In the district of New Spain four or five cases . . . of marriage with sisters were found.' In Peru, the 'Yncas from the first established it as a very stringent law and custom that the heir to the kingdom should marry his eldest sister, legitimate both on the side of the father and the mother.' So is it in Polynesia. Among the Sandwich Islanders near consanguineous marriages are frequent in the royal family—brothers and sisters sometimes marrying; and among the Malagasy, 'the nearest of kin marry, even brother and sister, if they have not the same mother.'"²

¹ H. Spencer, *Principles of Sociology*, § 280.

² *Ibid.* § 281, p. 606.

(d) Offences against nature.

Under this head are to be found a whole array of terrible possibilities from the "hardness" of men's "hearts." It is not necessary to follow them in any detail. Students will know that the sins spoken of by S. Paul in the first chapter of his epistle to the Romans were no monopoly of ancient Rome.¹

From this brief but sickening review it is sufficiently clear that there are possibilities of human degradation by the side of which the practices of polygamy and divorce seem to be innocence itself. What marvel then, if while all mankind lay outside the grace conferred through the redemption, the mercy of GOD was merciful to polygamy and divorce? The original institution of marriage was blurred and blighted in a hundred ways, and in such a wreck polygamy and divorce were but as minor blemishes. Accordingly, in the enquiry which will occupy the next chapter, we shall find that marriage after the Fall and outside Christianity has commonly admitted one or both of these features. Even in the case of the chosen people it pleased GOD for the hardness of their hearts to suffer these practices to remain without added condemnation. The grace of paradise had been taken away; the Pentecostal gift was not yet given; and GOD, as it were, stood by. It was reserved for the Christian Church, in the power of the indwelling Spirit of GOD, to rehabilitate the Divine institution of marriage as at once monogamous and indissoluble.

Significance of these records in the light of modern controversies.

Before leaving the subject of the corruption of all flesh, it may be worth while to glance at the significance of such records as those which have been cited, in the light of modern controversies. Writers like Mr. Herbert Spencer and Mr. McLennan, who discard the narrative of the Fall, and are prepared to expect an upward tendency from lower to higher social types throughout the history of the human race, are somewhat prone to infer from the existence of low types of the sexual relations that such types are the earliest, and that it is from such types that the comparatively high moral tone of most civilized

¹ Romans i. 26, 27.

communities, both Christian and non-Christian, has been developed. Such an inference is in fact gratuitous; and indeed Mr. Herbert Spencer frankly admits that viewed in the light of it many of the facts he cites are anomalous. He says:

No uniform advance towards higher types.

“While the facts show us the general association between the rudest forms of social existence and the most degraded relations of the sexes, they do not shew us that social progress and progress towards a higher type of family life are uniformly connected. Various anomalies meet us.

“Unenduring unions characterize many of the lower races: and yet the miserable Veddah, lower than most in their social state, form very enduring unions. Bailey writes, ‘Divorce is unknown among them. . . . I have heard a Veddah say “Death alone separates husband and wife”: a trait in which their Kandyan neighbours, otherwise superior, differ from them widely.’

“Nor does the diminution of incestuous connexions preserve a constant ratio to social evolution. Those extreme forms of them which we have noted among some of the most degraded races of North America are paralleled among royal families in African kingdoms of considerable size; while forms of them a degree less repulsive are common to savage and semi-civilised.

“Though that type of family life in which one wife has several husbands is said to occur among some of the lowest tribes, as the Fuegians, yet it is by no means common among the lowest; while we meet with it among relatively advanced peoples in Ceylon, in Malabar, and in Thibet. And the common arrangement of many wives to one husband, almost universally allowed and practised by savages, not only survives in semi-civilised societies, but has held its ground in societies of considerably developed types, past and present.”¹

Viewed from the Christian standpoint, which accepts the narrative of the Fall, the “corruption of all flesh” in its various developments is susceptible of an explanation as easy as it is lamentable, and as consistent as it is easy. This corruption, as we find it in the past and present practice of fallen man, is not an advance on an original condition of brutality, but a falling away from the high moral standard of the state of innocence. Where the corruption is greatest, there the fall has been greatest; where the corruption is least, there the fall has been

The Christian explanation.

¹ H. Spencer, *Principles of Sociology*, § 282, p. 607.

least. The corruption again has been by no means of uniform rapidity of growth, for it has depended largely on the free will of each individual person, and so, more generally, on the free will of each community. Nor has the progress of the corrupted condition been necessarily always in one direction, for fallen man is not found uniformly tending towards the light, though with different velocities; nor is he found hopelessly sinking into more Cimmerian darkness, though with varying degrees of resistance. There is in fact neither continuous fall nor continuous rise to be traced either uniformly or very generally. Some peoples, after centuries of moral probity, have fallen into gross degradations, as was the case with the Romans. Other peoples which have been immersed in similar gross degradations in a distant past have succeeded in throwing them off. This would appear to have been the case with the great Aryan stock in India, which, at one time given to the practice of polyandry—a practice still illustrated in certain of its outer tribes—is now as a race probably not inferior in morality to any non-Christian community. Among the Jews themselves the sins of incestuous connexion appear to have been practically put a stop to by the Mosaic code, without the assistance of the indwelling Spirit vouchsafed to the baptised. Similarly, doubtless, among other nations the graver and less natural offences have been from time to time thrown off by a moral effort blessed by God. While, however, the moral relations are thus found throughout history rising here and falling there, the Christian belief recognises as constantly at work a Divine process of retribution, which blots out the Canaans and Sodoms of the earth, and blesses the purer races with manifold increase. Thus a large proportion of the types of gross degradation cited as existing at the present day, so far from having before them a vista of necessary moral advance, are obviously in that last stage of debasement which is the immediate precursor of annihilation—a stage which in their case does certainly not manifest the early strivings of a creature emerging from the condition of the brute into the nobler life of humanity, but is rather the result of hundreds, or even thousands, of years of degraded existence, now at last about to be no longer suffered to exist.

CHAPTER V

OF MARRIAGE AFTER THE FALL, AND OUTSIDE CHRISTIANITY

IT was the chief aim of the preceding chapter to shew that if, as a matter of history, we find in the period after the Fall an absence of direct prohibition with regard to polygamy, divorce, and a certain union of near affinity, there is for this a reason in the nature of the case. It will be the aim of the present chapter to enquire what, as a matter of history, the estate of marriage in the period after the Fall actually was.

The present chapter a historical enquiry.

Marriage after the Fall, considered historically for the purpose of this volume, will naturally fall into two divisions, viz., (1) marriage as practised by the Hebrew people and (2) marriage as found among all other peoples from the Fall to the coming of the Holy Ghost at the Great Pentecost, and by all other non-Christian peoples since the Great Pentecost. The Hebrew practice will be far the most important to investigate. What God suffered in the way of laxity in the case of His own chosen people "for the hardness of their hearts" we may fairly conclude would, for the same reason, be suffered *a fortiori* among the outer heathen.

A. MARRIAGE AMONG THE CHOSEN PEOPLE.

(1) *Prior to the Mosaic Code.*

Beginning with the line of Seth as we find it after the Fall the only indication we have with regard to this family of particular divergences from the original marriage law is to be found in the narrative (if this be applicable) of the "sons of God" who "saw the daughters of men that they were fair,"

(a) Marriage among the Chosen People.
1. Prior to the Mosaic Code.

The line
of Seth.

and "who took them wives of all that they chose."¹ This *may* indicate polygamy or even promiscuity: nor can the line of Seth be exempted from its share in the general statement that "all flesh had corrupted his way upon the earth."² Polygamy is not otherwise recorded of the line of Seth before the flood, the only recorded instance being that of Lamech of the family of Cain.³ Clearly, however, no inference assuming general monogamy can be drawn from the scantiness of intimation on such a point in so brief a narrative. At the time of the deluge we find that Noah and his three sons had one wife each. "In the self-same day entered Noah, and Shem, and Ham, and Japheth, the sons of Noah, and Noah's wife, and the three wives of his sons with them, into the ark."⁴ It is not necessarily to be inferred from this that monogamy was the rule immediately before the Flood. Noah's family were treated by God with exceptional mercy when the rest of mankind were swept away, and swept away because, for one reason, "all flesh had corrupted his way upon the earth." It is not therefore unreasonable to suspect that the sexual relations of Noah's family did not represent the ordinary condition of things outside, but were of exceptional purity.

Marriages
of near kin.

Before passing on to the post-diluvian period, it may be as well to notice here that Seth, to perpetuate his line at all, must obviously have married either his sister or his niece, and if his niece, a niece herself the daughter of a brother and a sister. The teaching of the subsequent Mosaic Law, as of the Christian Church, is that such unions are unlawful, as "uncovering the nakedness" of "near kin"; nor is there any indication that, although God might suffer such an union, it could ever, under the present conditions of the race, be free from a sinful character. On the other hand, it is obvious from the nature of the case that if, while yet in the unfallen state, man had obeyed the command or claimed the benediction which bade him to "be fruitful and multiply and replenish the earth," the only way in which this could have been effected in the ordinary course of human generation would have

¹ Gen. vi. 2.

² Gen. vi. 12.

³ Gen. iv. 19. *Not* the Lamech of Gen. v. 28.

⁴ Gen. vii. 13.

involved the marriage of at least one brother with one sister. It is with some diffidence that a suggestion is here put forward by way of meeting this difficulty. The sin of incest is derived from the "uncovering of the nakedness" of "near kin"; and the shame of nakedness is itself a result of the Fall. Relation of incest to the Fall. May it not then be reasonably questioned whether the sin of incest was a thing possible save as the result of sin? In other words, whether the union of near kin in a state of innocence could involve any shame at all? Doubtless marriage between ascendants and descendants would be excluded. Such marriages could never be if there was no physical death to dissolve the first tie; and if we understand that the blessedness of Paradise did not exclude physical death, the obviously unsuitable character of such unions would doubtless have availed to prevent them. With regard to the marriage of brother and sister, however, it may be said, that as on the one hand such a marriage was necessary if the Divine intention in the multiplication of the race was to be fulfilled, so on the other hand, since in such marriages there was no nakedness to uncover, there could be in them no shameful incestuous character to detract from the purity of the un-fallen state.

When, however, the Fall had taken place, the first and most startling result of it was that sense of shame which led our first parents to clothe their nakedness; and when Seth married his sister or his niece, as the case may be, it was of necessity a shameful union, just as such an union would be shameful now; shameful, not because of a positive law forbidding it, but essentially, as involving an "uncovering of nakedness" become shameful as a result of the Fall. And it is most noticeable, as we go on in the history of the chosen people, that while polygamy and divorce, which offend against the original institution of marriage, appear to have been "winked at" to a certain extent as only to be expected in the circumstances of a race fallen and not yet redeemed, the sins of incest, the very possibility of which, if this theory be right, is a product of the Fall itself, are, with one remarkable exception, made the subject of detailed prohibitions, while the commission of

them in certain cases is given as a sufficient reason for the destruction of a people.

The
descend-
ants of
Shem.

Abraham.

In the history of the descendants of Shem after the Flood there is no indication as to the character of marriage as found among them till we come to the family of Terah, the father of Abraham and of his brothers Nahor and Haran. As noticed in the last chapter, we here come upon very lax customs as regards the intermarriage of near kin, Abram marrying his paternal half-sister Sarai, and Nahor his niece Milcah, the daughter of his elder brother Haran.¹ Both these descriptions of union were subsequently prohibited by the Mosaic code. Polygamy again is found practised by Abraham with no indication that there was any novelty in the custom, when, at the instance of Sarai, he takes Hagar to be his subordinate but rightful wife.² The history of Hagar also supplies an instance of divorce, which is indeed inseparable from a polygamous system, and might with reason be inferred from it. Sarah requires Abraham to "cast out this bondwoman and her son,"³ and no doubt as to the right to so cast her out is anywhere expressed. "The thing was very grievous in Abraham's sight because of his son";⁴ and then follows, what is most worthy of remark, God's direct sanction of the divorce in terms which amount indeed to a command to effect it. "And God said unto Abraham, Let it not be grievous in thy sight because of the lad, and because of thy bondwoman; in all that Sarah hath said unto thee, hearken unto her voice."⁵ It is no doubt the case that the divorce restored Abraham to a monogamous state, and that the blessing upon Ishmael which immediately followed may be said to have been dependent upon and to have formed part of the command to divorce; but it does not seem possible to see in the Divine action at this time any endeavour to restore the duty of monogamy, if we compare with it the law of the Mosaic code, no less Divinely sanctioned,⁶ which provides for the rightful treatment of a subordinate slave-wife. The only

¹ See p. 30.

² Gen. xvi. 3: "Gave her to her husband Abram to be his *wife* (ishah)."

³ Gen. xxi. 10. ⁴ Gen. xxi. 11. ⁵ Gen. xxi. 12. ⁶ Exodus xxi. 10.

reasonable explanation is that both polygamy and divorce were admitted, though it could not be fairly assumed that there would have been the same facility in divorcing Sarah as the first or principal wife, as there was in divorcing Hagar the subordinate slave-wife. It may be remarked by the way that in the history of Hagar, while no doubt the facts of Abraham's polygamy and of divorce by Abraham remain, the ruling circumstance throughout is the relation of Sarah and Hagar. It is Sarah who owns the bondwoman, Sarah who submits her to Abraham's embraces, Sarah who claims the child, and no less Sarah who insists on the expulsion.

Isaac had but one wife; but we find Jacob the husband of ^{Jacob.} four, and becoming by these four wives the father of the twelve tribes, which God so abundantly blessed. The two wives of recognised position, Leah and Rachel, were also sisters; a case of polygamy expressly prohibited at a later date in the Mosaic code.¹ The long period of Egyptian sojourn was doubtless not free from the custom of polygamy, since we find it practised ^{The bondage in Egypt.} both before and after. Jahn² indeed infers that polygamy must have been very prevalent, inasmuch as, in the time of Moses, while the men above twenty years of age numbered 603,500, the first-born males, including children, were only 22,373 in number.³ It is difficult to estimate to what extent the Hebrews adopted the practices of their Egyptian masters; but that these included alliances of near kin may be inferred from the fact that in the eighteenth chapter of Leviticus, before an enumeration of incestuous marriages and unlawful lusts, Egypt is classed with Canaan as an example to be avoided. "After the doings of the land of Egypt, wherein ye dwelt, shall ye not do; and after the doings of the land of Canaan, whither I bring you, shall ye not do: neither shall ye walk in their ordinances."⁴

¹ Leviticus xviii. 18.

² Jahn, *Biblical Archaeology*, § 151.

³ Numbers iii. 42.

⁴ Leviticus xviii. 3.

(2) *The Mosaic Code.*2. The
Mosaic
Code

After the deliverance from the bondage of Egypt, we come to the comparative fulness of light which is shed on the practice of the Hebrew nation by the Mosaic code.¹ It will be convenient to divide our investigation as to the teaching of this code, with any illustrations from the later history, under three heads; viz., (1) the relaxations of the original law permitted in the matter of polygamy, (2) similar relaxations as to divorce, and (3) the injunctions controlling the marriage of near kin, with the remarkable relaxation known as the Levirate law.

(i.) *Polygamy.*(a) *Provisions of the Code.*(i)
Polygamy.

The regulations of the Mosaic code which affect polygamy are as follows:

(a) Pro-
visions of
the Code.

(a) *A Woman to her Sister.* The injunction is given:

Leviticus xviii. 18:

Neither shalt thou take a wife to her sister, to vex *her*, to uncover her nakedness, beside the other in her life *time*.

This may either be interpreted to forbid incestuous polygamy with the wife's sister, the explanation of the passage most usually adopted among the Jews; or it may be taken, as the sect of the Karaites did in fact take it, to forbid polygamy altogether. It will be presently seen that if the latter interpretation is the correct one, the injunction remained practically a dead letter.

(β) *Slave Wives.* Nor did the Mosaic code expect or require that polygamy should cease, for in the ordinances which regulate the taking of female servants in marriage, the rule occurs:

Exodus xxi. 10:

If he take him another *wife*; her food, her raiment, and her duty of marriage, shall he not diminish.

¹ In the following pages the laws of the Pentateuch are taken as one system; but it will not be difficult for those who accept the conclusions of a recent criticism to apply them to the various passages cited.

It must be allowed that this regulation of polygamy tolerates if it does not approve it.

(γ) *Royal Polygamy*. The ordinances affecting the kings of the future contain the prohibition,

Deuteronomy xvii. 17 :

Neither shall he multiply wives to himself, that his heart turn not away.

where we understand that what is condemned is that unrestrained license of Asiatic monarchs, of which Solomon is so notable an example. No limit of number is given, though Rabbis in after ages very commonly taught, as Musulmans teach now, that the number of wives should not exceed four.

(δ) *Ceremonial Checks*. The ceremonial uncleanness following the copula, taken together with the right of each wife, amounts to a distinct check upon the practice of polygamy.¹

(ε) *The Levirate Custom*. The Levirate custom will be presently considered as regards its peculiar feature. With respect to the point of polygamy, it is often overlooked that the provisions of the Levirate law seem to have been only applicable "if brethren dwell together."² It does not therefore appear that a surviving brother who had already a separate establishment would be bound by the provisions of the Levirate law. In a society which favoured polygamy the fulfilment of the idea of the Levirate custom by a married brother may nevertheless have held ground.

(ζ) *Laws Governing the Distribution of Property*. The law governing the distribution of property among the sons of two wives must be held to give a certain sanction to such marriage with two wives.

Deuteronomy xxi. 15-17 :

15 If a man have two wives, one beloved, and another hated, and they have born him children, *both* the beloved and the hated ; and *if* the firstborn son be her's that was hated :

16 Then it shall be, when he maketh his sons to inherit *that* which he hath, *that* he may not make the son of the beloved firstborn before the son of the hated, *which is indeed* the firstborn :

17 But he shall acknowledge the son of the hated *for* the firstborn, by giving him a double portion of all that he hath : for he *is* the beginning of his strength ; the right of the firstborn *is* his.

¹ Lev. xv. 18.

² Deut. xxv. 5.

(η) *Captives of War*. In connexion with these provisions the laws regulating the treatment of women taken captives of war must also be held to at once regulate and sanction polygamous unions. When a city is taken which is not a city of the land, but is "very far off," the following ruling is made:

Deuteronomy xx. 13-15:

13 And when the LORD thy God hath delivered it into thine hands, thou shalt smite every male thereof with the edge of the sword :

14 But the women, and the little ones, and the cattle, and all that is in the city, *even* all the spoil thereof, shalt thou take unto thyself ; and thou shalt eat the spoil of thine enemies, which the LORD thy God hath given thee.

15 Thus shalt thou do unto all the cities *which are* very far off from thee, which *are* not of the cities of these nations.

As regards the women, this is evidently the universal custom of the time ; but the custom is to be restricted in the case of the Israelite in three ways :

(1) The woman is to be free from solicitation for a month after capture.

(2) She is then, if the man desire it, to be his *wife*.

(3) If he tire of her he is not to sell her, but to let her go whither she will, because he has humbled her.

Deuteronomy xxi. 10-14 :

10 When thou goest forth to war against thine enemies, and the LORD thy God hath delivered them into thine hands, and thou hast taken them captive,

11 And seest among the captives a beautiful woman, and hast a desire unto her, that thou wouldest have her to thy wife ;

12 Then thou shalt bring her home to thine house ; and she shall shave her head, and pare her nails ;

13 And she shall put the raiment of her captivity from off her, and shall remain in thine house, and bewail her father and her mother a full month : and after that thou shalt go in unto her, and be her husband, and she shall be thy wife.

14 And it shall be, if thou have no delight in her, then thou shalt let her go whither she will ; but thou shalt not sell her at all for money, thou shalt not make merchandise of her, because thou hast humbled her.

Summing up the provisions of the Mosaic code as they affect polygamy, it appears

(1) That they find the practice admitted, and

(2) That they regulate and restrain it, but

(3) That they do not condemn it (if, at least, the ordinary Jewish interpretation of Leviticus xviii. 18 hold good).

(b) Practice of the Hebrew People.

Passing on to the actual practice of the nation after the promulgation of the Mosaic code, we find that "Gideon had threescore and ten sons of his body begotten, for he had many wives";¹ that Elkanah "had two wives; the name of the one was Hannah, and the name of the other Peninnah";² that Saul had wives which were afterwards given "into" David's "bosom";³ that David "took him more concubines and wives out of Jerusalem, after he was come from Hebron";⁴ that king Solomon "had seven hundred wives, princesses, and three hundred concubines";⁵ that the sons of Issachar "had many wives and sons";⁶ that Hushim and Baara were the wives of Shahraraim;⁷ that Rehoboam "took eighteen wives, and threescore concubines";⁸ that Abijah "married fourteen wives";⁹ and that Jehoiada took for Joash "two wives";¹⁰ while polygamy must be inferred from the statements that Jair the Gileadite "had thirty sons that rode on thirty ass colts";¹¹ that Ibzan of Bethlehem had "thirty sons and thirty daughters";¹² and that Abdon the son of Hillel "had forty sons."¹³ It should be noticed here, as before in the cases of Abraham and Jacob, that the practice of polygamy did not necessarily forfeit the Divine blessing. Elkanah, David, and Joash, not to mention other instances, were obviously the recipients of God's favours while in the practice of polygamy.

Practice
of the
Hebrews.

Instances.

Polygamy
did not
forfeit the
Divine
blessing.

Holy Scripture contains no instances of polygamy in the post-Babylonian period, and it appears probable that the practice was comparatively rare. The poverty which makes it a difficult matter to support more than one family would sufficiently explain this. It is for this reason that the taking of a second wife is at the present day the exception rather than the rule among the Musulmans in India. It is, however, doubtful whether polygamy was altogether discontinued by the

The post-
Babylonian
period.¹ Judges viii. 30.² 1 Samuel i. 2.³ 2 Samuel xii. 8.⁴ 2 Samuel v. 13.⁵ 1 Kings xi. 3.⁶ 1 Chronicles vii. 4.⁷ 1 Chronicles viii. 8.⁸ 2 Chronicles xi. 21.⁹ 2 Chronicles xiii. 21.¹⁰ 2 Chronicles xxiv. 3.¹¹ Judges x. 4.¹² Judges xii. 9.¹³ Judges xii. 14.

Jews at any time prior to the coming of our Lord. In the Mishna, which is believed to have been compiled about A.D. 220, there is constant reference throughout the treatise *Yebamoth* to the two or more wives of one man, the appellation used being *tsaroth*,¹ i.e., troubles, adversaries, or rivals, because, as Kimchi observes in his commentary to 1 Samuel i. 6, where this word occurs, wives are commonly sources of trouble, jealousy, and vexation to each other.² Josephus states that Herod the Great had no less than nine wives at one time.³ His statement is however made in a way which implies that such polygamy was unusual, and a matter which might be expected to excite surprise. In our Lord's time polygamy does not appear to have been a present difficulty, if we may judge from the entire silence of the Gospels on the subject. After the time of our Lord, as before it, the Jewish doctors, so far as their teaching was concerned, recognised polygamy as a permissible practice. It will be sufficient to quote Maimonides (1135 A.D.-1204 A.D.):⁴

"It is permissible to marry any number of wives, even a hundred, and that either all at once, or one after another; nor has a wife previously married any power to hinder a man in this, provided only that he have the means of affording food, raiment, and the duty of marriage in such wise as is suitable to each of them."

While, however, teachers continued to advocate the rightfulness of polygamy, the practice of it, at least among the Jews of Northern and Central Europe, seems to have been discountenanced. Polygamy was actually prohibited under pain of excommunication, except in certain specified cases, by the Rabbi Gershom ben Jehudah at the Synod of Worms in the year 1020, or a hundred years before the utterance of Maimonides just cited.⁵ In Spain indeed the interdict of R. Gershom was never recognised, and the polygamy of the

¹ As in 1 Sam. i. 6.

² De Sola's *Mishna*, treatise *Yebamoth*.

³ Josephus, *Antiquities*, xvii. 1, § 3.

⁴ Maimonides, *Halach-Ishoth*, cap. 14, quoted by Selden, *De Jure Naturali et Gentium*, lib. 5, c. 6.

⁵ Grätz, *Geschichte der Juden*, v. 405-507.

Jews was even expressly permitted by the Christian government of Navarre, and by the law of King Theobald.¹ At the present day the Jews of Europe do not appear to practise polygamy.

From this brief review it sufficiently appears that polygamy was both permitted to and practised by the chosen people.

(ii.) *Divorce.*

The permission to divorce a wife is very clearly given by the Mosaic code. Our Lord at once admits the permission, and explains the ground of it, when He says, "Moses because of the hardness of your hearts suffered you to put away your wives: but from the beginning it was not so."¹ The terms of the permission are as follows:

(u) Law of
the Bill of
Divorce.

Deuteronomy xxiv. 1-4.

1 When a man hath taken a wife, and married her, and it come to pass that she find no favour in his eyes, because he hath found some uncleanness in her: then let him write her a bill of divorcement, and give *it* in her hand, and send her out of his house.

2 And when she is departed out of his house, she may go and be another man's *wife*.

3 And *if* the latter husband hate her, and write her a bill of divorcement, and giveth *it* in her hand, and sendeth her out of his house; or if the latter husband die, which took her *to be* his wife;

4 Her former husband, which sent her away, may not take her again to be his wife, after that she is defiled; for that *is* abomination before the Lord: and thou shalt not cause the land to sin, which the Lord thy God giveth thee *for an* inheritance.

The later schools of Jewish expositors were sharply divided as to what constituted an adequate ground of divorce. Moses in the passage just quoted permitted divorce if the husband had "found some uncleanness in" the wife: the literal meaning of the phrase "some uncleanness" being the "nakedness of a thing." It is the same phrase which is used in Deut. xxiii. 14, apparently to denote anything shameful or improper. The school of Hillel, taking the expression as vague and indeterminate, contended that the husband might lawfully put away his wife

¹ Kayserling, *Geschichte der Juden in Spanien*, i. 71.

² S. Matthew xix. 8.

for any cause, however trivial, as, for instance, want of skill in cookery ("if a woman let the broth burn").¹ Rabbi Akiva even held that a man might divorce his wife if he found another woman more beautiful. The school of Shammai, taking a stricter view, explained the "nakedness of a thing" to mean actual adultery.² The reference of this vexed question to our Lord elicited from Him no direct reply as to which school was the more correct exponent of the meaning of the disputed phrase; but in the place of this He made what was to His hearers the startling statement that the whole system was a departure from the original law of marriage. "From the beginning it was not so."³ Although divorce was no doubt permitted, it was permitted only because of the sinful "hardness" of men's "hearts."

The
Mosaic
Code
neither
originated
the practice
nor
rendered it
more easy.

It is clear, however, that although the Mosaic code suffered the practice of divorce, that code neither originated the practice, nor rendered it more easy. The dismissal of Hagar by Abraham, which is an example of divorce anterior to the Mosaic code, is also probably an example of the rough and ready procedure which in the patriarchal age would commonly characterise it.⁴ A glance at the terms of the Mosaic regulation of divorce quoted above is sufficient to shew that the mind of the law-giver was concerned with the regulation, and not with the introduction, of the practice. As in the case of the regulations affecting polygamy, the regulations on the subject of divorce are in the direction of restraint, not in that of encouragement. Whereas previously divorce seems to have been effected by the mere sending away of the woman, after the promulgation of the Mosaic law the woman had to receive a formal document known as the bill of divorcement.

(b) Rights
of the wife,
failing
which she
might
retire.

The woman had no power to give her husband a bill of divorcement; but a servant wife who had been bought with money might require the three conjugal rights—food, raiment, and duty of marriage—and if any of these three were withheld, might leave her husband without any payment being required of her.

¹ *Mishna, Gittin*, ix. 10.

² *Ibid.* ix. 10.

³ S. Matthew xix. 8.

⁴ Gen. xxi. 14.

Exodus xxi. 10, 11 :

10 If he take him another *wife* ; her food, her raiment, and her duty of marriage, shall he not diminish.

11 And if he do not these three unto her, then shall she go out free without money.

After so leaving her husband the woman was free to marry again, and the leaving was therefore in fact a divorce. It was sometimes assumed, at least in later times, that a wife of superior position was not more restricted in analogous circumstances, and accordingly there are some notices of the wife taking the initiative in cases of divorce.¹ Our Lord probably adverted to this practice when He said, "And if a woman shall put away her husband, and be married to another, she committeth adultery."²

Notwithstanding, however, the concession of the power of divorce to ordinary members of the community, the comparative unholiness of the practice was unmistakeably taught by the prohibition of marriage with a divorced woman in the case of the priests.

(c) Priests
forbidden
to marry
divorced
women.

Leviticus xxi. 7 :

7 They shall not take a wife *that is* a whore, or profane ; neither shall they take a woman put away from her husband : for he *is* holy unto his God.

The same sense of the comparative unholiness of divorce even when permitted is found in the utterances of Malachi, which doubtless found a more or less pronounced echo in the consciences of the people. "The Lord, the GOD of Israel, saith that he hateth putting away." The context may again be quoted.

(d) God's
hatred of
putting
away.

Malachi ii. 14-16 :

14 Yet ye say, Wherefore ? Because the LORD hath been witness between thee and the wife of thy youth, against whom thou hast dealt treacherously : yet *is* she thy companion, and the wife of thy covenant.

15 And did not he make one ? Yet had he the residue of the spirit. And wherefore one ? That he might seek a godly seed. Therefore take heed to your spirit, and let none deal treacherously against the wife of his youth.

16 For the LORD, the God of Israel, saith that He hateth putting away : for *one* covereth violence with his garment, saith the LORD of hosts : therefore take heed to your spirit, that ye deal not treacherously.

¹ Josephus, *Antiquities*, xv. vii. 10 (Case of Salome).

² S. Mark x. 12.

Our Lord's teaching removed all doubt that might exist as to the rightfulness of this depreciatory tone. Divorce had found no place in the original institution, and was conceded simply for the hardness of men's hearts.¹

It is unnecessary to prove that divorce was in common practice among the Jewish people. The reply of the disciples to our Lord's teaching on the subject may sufficiently indicate the current tone of the day: "If the case of a man be so with his wife, it is not good to marry."²

Divorce then was both permitted to and practised by the Jewish people.

(iii.) *The Levirate Custom.*

(iii) The
Levirate
Custom.

Incestuous
connexions
are con-
demned by
the Code.

The Mosaic code is exceedingly strict in the matter of incestuous unions. Both consanguinity, or blood relationship, and affinity, or relationship through marriage, constitute hindrances to marriage within certain specified limits.³ The details of the law will be examined in a later chapter; but it is clear *prima facie* that the prohibitions of incestuous connexions are direct and peremptory. Although in the Mosaic code God did not prohibit by direct legislation either polygamy or divorce to a nation which, while they were His chosen people, were yet estranged from holiness by the Fall; yet in their fallen condition He did hold them bound to the avoiding of all shameful "uncovering of nakedness." And not only did He hold His own chosen people to be so bound, but even in the case of the outside heathen He did not shew Himself prepared to relax His requirements. "Ye shall not walk in the manners of the nation which I cast out before you; for they committed all these things, and therefore I abhorred them"⁴ is a warning which follows on a list of prohibited practices, of which incestuous unions form a considerable proportion. If the suggestion already thrown out in this chapter be correct, that the shame and therefore the sin of unions of near kin were the direct product of the Fall, and that such unions would have had no sinfulness in the unfallen

¹ S. Matt. xix. 8.

² S. Matt. xix. 10.

³ Leviticus, chapters xviii. xx.

⁴ Leviticus xx. 23.

state, we seem to have a glimpse of the laws which underlie the Divine action, and to understand that these sins may be made in a special way the objects of the curse which followed the Fall. That these sins are held to be signally accursed is very plain. After an enumeration in the eighteenth chapter of Leviticus of what are chiefly incestuous offences, we have this warning:

Leviticus xviii. 24-30:

24 Defile not ye yourselves in any of these things: for in all these the nations are defiled which I cast out before you:

25 And the land is defiled: therefore I do visit the iniquity thereof upon it, and the land itself vomiteth out her inhabitants.

26 Ye shall therefore keep my statutes and my judgments, and shall not commit *any* of these abominations: *neither* any of your own nation, nor any stranger that sojourneth among you;

27 (For all these abominations have the men of the land done, which *were* before you, and the land is defiled;)

28 That the land spue not you out also, when ye defile it, as it spued out the nations that *were* before you.

29 For whosoever shall commit any of these abominations, even the souls that commit *them* shall be cut off from among their people.

30 Therefore shall ye keep mine ordinance, that *ye* commit not *any one* of these abominable customs, which were committed before you, and that ye defile not yourselves therein: I *am* the LORD your God.

Thus of three customs which the chosen people found "committed before" them, two, polygamy and divorce, although at variance with the original institution of marriage, were in a measure suffered, presumably as less "abominable"; while the third custom of the unholy alliance of near kin was to be at once ended, under penalty, in the case of the individual, of the person being cut off from among his people, and in the case of a people, of the land vomiting out its inhabitants.⁵

Among the offences thus strictly denounced is the offence of marrying a brother's wife. "Thou shalt not uncover the nakedness of thy brother's wife: it is thy brother's nakedness." The reason given explains why the relationship, which is not one of consanguinity, but only of affinity, should nevertheless bar marriage. And in the case of this particular union, it must not only be held to have its share in the solemn warning

Among
them
marriage
with a
brother's
wife.

⁵ Leviticus xviii. 25; xx. 22.

against incestuous sins generally, which has already been quoted, but the particular curse of childlessness is, under ordinary circumstances, to attach to it.

Leviticus xx. 21 :

And if a man shall take his brother's wife, it *is* an unclean thing : he hath uncovered his brother's nakedness ; they shall be childless.

The
exception.

Now it appears plain from the character both of this special denunciation, and of the general statements regarding the punishment of the Canaanites, that sins of too close union were regarded as sinful, not because of any positive or ceremonial regulations, but by reason of their inherent impurity in the fallen state. Yet notwithstanding this inherent impurity, we now come to the remarkable exception which is commonly known as the Levirate law (from the Latin *levir*, brother-in-law).

Deuteronomy xxv. 5-10 :

5 If brethren dwell together, and one of them die, and have no child, the wife of the dead shall not marry without unto a stranger : her husband's brother shall go in unto her, and take her to him to wife, and perform the duty of an husband's brother unto her.

6 And it shall be, *that* the firstborn which she beareth shall succeed in the name of his brother *which is* dead, that his name be not put out of Israel.

7 And if the man like not to take his brother's wife, then let his brother's wife go up to the gate unto the elders, and say, My husband's brother refuseth to raise up unto his brother a name in Israel, he will not perform the duty of my husband's brother.

8 Then the elders of his city shall call him, and speak unto him : and *if* he stand *to it*, and say, I like not to take her ;

9 Then shall his brother's wife come unto him in the presence of the elders, and loose his shoe from off his foot, and spit in his face, and shall answer and say, So shall it be done unto that man that will not build up his brother's house.

10 And his name shall be called in Israel, The house of him that hath his shoe loosed.

By this Levirate law the union of a man with his brother's widow, which, as we have seen, is in ordinary circumstances denounced as impurity, and threatened with the punishment of childlessness, is, in the case when the brother has died without a son having been born to him, not only permitted, but actually enjoined. In such case the next surviving brother is to take the widow and to raise up seed to the brother which is dead.

The union is not indeed made altogether compulsory, but it is nevertheless pressed upon the surviving brother as expedient, and as indeed so fairly due from him that non-compliance should justly subject him to penalty. The woman is to complain to the elders that "he hath not performed the *duty* of an husband's brother unto me." Thereupon the brother is subjected to a process involving public disrepute.

An important question arises in connexion with the Levirate law. Is Moses, under GOD's guidance, making here a new law which, for the sake of the apportionment of inheritance, disregards the inherent sinfulness of an incestuous alliance? or is the Levirate law the permission of an existing custom, as in the case of the permissions accorded to polygamy and divorce? If the latter, then we can understand that the marriage of a man with his brother's widow under the specified circumstances is retained, although not devoid of a sinful character, just in the same way as polygamy and divorce were retained, although not devoid of a sinful character. In the state of sin wherein men lived when alienated from God by the Fall, and not as yet redeemed by Him, it might please God to suffer all these things for the hardness of men's hearts, lest worse should come.

What, then, are the facts? We find that beyond all doubt the custom was an old one, and not only so but that the Mosaic regulations, as in the cases of polygamy and divorce, are distinctly in the direction of restraining the power of the objectionable custom. In the case of Tamar, certainly some hundreds of years before the code of Deuteronomy, we find the practice in full force.¹ Tamar was the wife of Er, the first-born son of Judah. By the Levirate custom it fell to Onan, as the next brother, to raise up seed to Er. This he declined to do, because he "knew that the seed should not be his." After the death of Onan, which was brought about by a Divine judgment, Judah told Tamar to remain a widow at her father's house till Shelah, his next son, should be grown. Tamar did so, but finding that Shelah was not then given to her she procured an union with Judah himself by means of an artifice,

Is the
Levirate
Law a new
law, or the
permission
of an
existing
custom?

The
custom was
ancient,
and the
Mosaic
Law is
in the
direction of
restraint.

¹ Genesis xxxviii.

and so conceived. On the circumstances becoming known, Judah's judgment was, "She hath been more righteous than I; because that I gave her not to Shelah my son." But it is added that "he knew her again no more."¹ From this narrative it is clear that the Levirate custom was of ancient origin, certainly preceding the Egyptian sojourn, and it farther appears that it was of a more binding character at the earlier period than under the Mosaic law. That law permitted the brother or next of kin to decline the union in the presence of judges if he were prepared to go through the ordeal of (1) being spat upon and (2) having his shoes loosed by the widow, and also (3) of being named in Israel the "unshod."² Grave as the resulting disgrace would be, it was still not so grave but that a person who was strongly indisposed to effect the union would dare to encounter it. In the case of Tamar it does not appear to be admitted that Onan had any right at all to decline the union; and it seems to be implied that when Onan was dead Judah was bound to raise up seed to Er, if not by Shelah, then in his own person. Here we have a distinct advance at the later period. The Levirate usage is indeed retained, but coupled with it is a power of dispensation which would in time go far to render the usage a dead letter.

The
Levirate
custom
among
other
peoples.

For the proper understanding of the Levirate law it is necessary to notice that the custom prevailed widely outside the Hebrew limits. In the laws of Manu, the great legal code of ancient India, we find the custom at much the same stage as we have it in the Mosaic code. The obligation of taking the widow of a deceased brother is laid down; but, as in the Biblical cases, only where the deceased has left no son. The raising up of issue to the deceased brother is made the object of the union; and the rule of inheritance is laid down as follows: "Should a younger brother have begotten a son on the wife of his deceased elder brother, the division (of the estate) must then be made equally between that son, who represents the deceased, and his natural father: thus is the law settled."³ When the object is once attained, the union is to cease. "The

¹ Gen. xxxviii. 26.

² Deut. xxv. 9, 10.

³ Manu, ix. § 120.

first object of the appointment being obtained, according to law, both the brother and the widow must live together like a father and daughter by affinity."¹

The custom of the Levirate is said to exist in the present day amongst the South African tribes,² amongst the Arabians,³ amongst the Druses,⁴ and amongst the tribes of the Caucasus.⁵

Mr. McLennan in an investigation of much interest finds the origin of the Levirate law in the practice of polyandry, which appears to have been very widely spread, and reference to which has already been made.⁶ In the more usual and limited form of polyandry, the brothers of a family have one wife among them. The description of the people of Ladak, given in *Moorecroft and Trebeck's Travels*, is of interest in this connection.

Possibly a
revival of
Polyandry.

"In Ladak, when an eldest son marries, the property of his father (more properly the family estate) descends to him, and he is charged with the maintenance of his parents. The parents may continue to live with him, if he and his wife please; if not, a separate dwelling is provided for them. A younger son is usually made a Lama. Should there be more brothers, and they agree to the arrangement, the juniors become inferior husbands to the wife; all the children, however, are considered as belonging to the head of the family. The younger brothers have no authority; they wait upon the elder as his servants, and can be turned out of doors at his pleasure, without it being incumbent upon him to provide for them. *On the death of the eldest brother his property, authority, and widow devolve upon his next brother.*"⁷

Thus, in Ladak, while the normal type appears to be a polyandrous union of one woman with more than one brother at the same time, the brothers need not fall in with the arrangement; but if the elder brother die, then the younger must

¹ Manu, ix. § 62.

² Colenso, *Pentateuch*, § 754.

³ Burekhardt, *Notes*, i. 112.

⁴ Volney, *Travels*, ii. 80.

⁵ Haxthausen, *Transcaucasia*, p. 403. See also Mr. Herbert Spencer's instances of succession to a brother's wife, quoted on p. 61.

⁶ McLennan, J. F., *Primitive Marriage*. In the new edition of this work, which is included in *Studies in Ancient History* (1886), the statements of the first edition are somewhat modified, pp. 109, *sqq.* See also Mr. McLennan's article, "The Levirate and Polyandry," in the *Fortnightly Review* of 1877, p. 694.

⁷ Moorecroft and Trebeck's *Travels*, 1841, vol. i. p. 320, quoted by McLennan.

succeed to the widow as the condition of succeeding to the property. Here we have the transition from limited polyandry, or the contemporary union of brothers with one wife, to the Levirate custom; but the custom as here found is not with a view to raising up a son as heir to the elder brother's estate, which passes over of right to the younger brother, if he take the widow, nor is the union discontinued on the birth of such a son. The Ladak practice appears therefore to suggest that the Levirate custom had its origin in the practice of polyandry, and that the sense of obligation to raise up seed to the deceased brother was not the original ground of the usage, but a later development from it.

It is, however, not to be denied that the prominent place ascribed alike in the Mosaic code and in the narrative of Tamar, to the raising up of seed to the deceased as supplying the ground of the Levirate custom, is an argument of much force against the theory that the custom is a survival of polyandry. Under a polyandrous system the deceased brother's son would not ordinarily have inherited in any case, inheritance in polyandrous communities being usually from uterine brother to uterine brother, or else altogether in the females. It may nevertheless be the case that the Levirate custom is rightly derived from polyandrous usages, if there are indications in actual history that the newer purpose of raising up an heir was engrafted on an older practice of the polyandry of one woman with all the brothers of a family. The laws of Manu appear to afford such an indication. Those laws assign half the inheritance to the brother who marries the widow, and the other half to the son whom he raises up to the deceased. In this, the Indian example, we have sufficient evidence that polyandry did at one time prevail, and the Levirate law of the code of Manu may therefore be said to be not merely a possible case of the transition suggested, but a demonstrated case of such transition.¹ The

¹ Very noticeable in the code of Manu is the perplexity of the compiler on the subject of the Levirate custom. By the legal theory of his day there is no doubt that "the first object of the appointment (§ 61, § 62)" is the raising up of a son to the deceased brother; but for all that he stigmatises the practice as "fit only for cattle (§ 66)," and as inadmissible to the twice-born classes (§ 64).

strongly antagonistic feeling evinced by Onan to the raising up of seed to his brother may be an indication of the same transitional stage; it is not the widow, but the heir and supplanter who is the object of aversion. There is indeed no evidence of polyandry in the chosen line itself; but as the Levirate custom was in all probability adopted from the neighbouring nations or tribes, so too would be the current feeling towards the custom.

Mr. Herbert Spencer declines to accept the view that the Levirate custom is a survival of polyandry. His opinions may be quoted:

Or a form
of the
inheritance
of chattels.

“It seems to me, however, quite possible to find in the customs of primitive peoples another explanation which is much more natural. Under early social systems wives, being regarded as property, are inherited in the same way as other property. When we read that among the ‘Bellabillahs (Haidahs) the widow of the deceased is transferred to his brother’s harem’; that among the Zulus ‘the widow is transferred to the brother of her deceased husband on his death’; that among the Damaras, ‘when a chief dies, his surviving wives are transferred to his brother, or to *his nearest relation*’; the suspicion is raised that this taking possession of a brother’s wife has nothing to do with polyandry. This suspicion is confirmed on finding that in Congo, ‘if there be three brothers and one of them die, the two survivors share his concubines between them’; on finding that in Samoa ‘the brother of a deceased husband considered himself *entitled* to have his brother’s wife’; on finding that in ancient Vera Paz ‘the brother of the deceased at once took her (the widow) as his wife, even if he was married; and if he did not, another relation had a right to her.’ These facts imply that where wives are classed simply as objects of value (usually purchased), the succession to them by purchase goes along with succession in general. And if there needs further evidence, I may cite this, that in sundry places a father’s wives are inherited. Thomson says that among the New Zealanders ‘fathers’ wives descended to their sons, and dead brothers’ wives to their surviving brothers.’ Of the Mishmis Rowlett states that ‘when a man dies or becomes old, it is the custom of these people for the wives to be distributed amongst his sons, who take them to wife.’ Torquemada mentions provinces of Mexico in which the sons inherited those wives of their father who had not yet borne

sons to the deceased. In his *Abeokuta* Barton states that among the Egbas 'the son inherits all the father's wives except his own mother.' We learn from Bosman that on the Slave Coast, 'upon the father's death, the eldest son inherits all his goods and cattle, his wives . . . except his own mother.' And in Dahomy the king's eldest son 'inherits the deceased's wives, and makes them his own, excepting, of course, the woman that bare him.'

"We cannot then admit that the practice of marrying a dead brother's widow implies pre-existence of polyandry, and cannot accept the inference that out of decaying polyandry higher forms of marriage grew up."¹

It is not material to our present enquiry to decide whether the Levirate custom is commonly a survival of polyandry or a form of the inheritance of chattels. Nor need it be asserted that the custom has its roots in either of these. What appears to be altogether clear is, that the practice has many remarkable affinities in communities where a very low type of sexual relation prevails.

Conclu-
sions as to
the
Levirate
Law of the
Mosaic
Code.

The
Levirate
custom,
though not
devoid of
a sinful
character,
suffered
for the
hardness
of men's
hearts.

Returning now to the consideration of the Levirate custom as practised by the chosen people, we are in a position to see (1) that the custom involves a union of near kin, which under other circumstances is asserted to be inherently sinful; (2) that it was not originated by the Mosaic legislation, but was in force centuries before that legislation; (3) that it was not confined to the chosen line, but was practised in various other countries, and under circumstances pointing to great moral laxity; (4) that in the chosen line it appears at no time to have been permitted, except with special reference to the continuance of families; and (5) that its compulsory character is taken away by the Mosaic code, which simply visits non-compliance with the penalty of a marked discredit. It is accordingly reasonable to infer that the Levirate custom, like polygamy and divorce, was a custom not devoid of a sinful character, but suffered for awhile in a fallen race for the hardness of men's hearts, and that the Mosaic legislation with regard to it was in the direction of restraint, and not in that of encouragement.

¹ H. Spencer, *Principles of Sociology* (1885), §302.

It thus appears that Almighty God suffered among the chosen people during the time of the estrangement of the race the practices of (1) polygamy, (2) divorce, and (3) the Levirate custom. Our Lord expressly states that one of these practices, that of divorce, was in direct contravention of the Divine institution, but that it was suffered because of the hardness of men's hearts. The same explanation appears to be entirely applicable to the other two practices, those of polygamy and the Levirate custom. When all were in the state of sin, waiting for a redemption not yet accorded, such practices were relatively less important; and not till the state of grace had been restored by the atonement, and by the coming of the Holy Ghost to dwell in the persons of the faithful, does it appear that the original conditions of the Divine institution were fully and invariably insisted upon.

Summary
of con-
cessions
to the
Chosen
People.

B. MARRIAGE AMONG NON-CHRISTIAN PEOPLES OTHER THAN THE CHOSEN RACE.

Marriage in the fallen state and outside Christianity has to be reckoned with not only as it existed among the Israelites, but as it was found in the whole human race prior to the coming of the Holy Ghost at the Great Pentecost, and also as it has been found since the Great Pentecost in all persons other than Christians. From the Christian standpoint it is clearly most improbable that marriage would as a rule be better guarded in the race at large than it was in the case of the Chosen People. We have already had occasion to glance at the records of terrible degradation, altogether outside the limits of Divine permission, which have stained the histories of certain peoples.¹ With respect to the practices of divorce and polygamy, which were permitted to the Israelites, it is matter of so great notoriety that they have been of usual occurrence among non-Christian peoples that it seems superfluous to make any attempt at enumeration. It will hardly be disputed that it is the rule among non-Christian peoples to permit either (1) divorce, or (2) polygamy, or (3) both. If there be any non-

Marriage
outside the
Chosen
People.

¹ See pp. 32-37.

Christian communities which at once exclude polygamy and divorce they are certainly the exceptions. The task of enumerating the communities which have suffered either divorce or polygamy, or both, may then be declined. It is perhaps of greater importance to ask whether, in any of the non-Christian peoples with whom we are brought into connection, the conditions of the marriage contract seem to be the same as those of the Christian marriage contract. Even if the conditions of the contract are in any given case of the same high character, this treatise will take the ground that the status following the contract cannot be the same, inasmuch as in the case of the Christian it is the presence of the indwelling Spirit which gives to the union its character of holiness, while in the case of the non-Christian that presence is not supplied. It cannot, however, be denied that it is a much more serious thing to sever a tie which was entered into on the distinct understanding that it was to be at once exclusive and indissoluble, than it is to sever another tie which never at any time laid claim to either character. It is therefore always of importance to be acquainted with the terms of the marriage contract in the case of any non-Christian people with whom we are brought in connection.

It would no doubt be a mistake to infer that even if a community can be shewn to exist which excludes both polygamy and divorce from the terms of its marriage contracts, such a community will of necessity be purer than another in which those practices are suffered. If the mere imposition of a law or requirement of a custom could have secured the true purity of marriage, GOD would hardly have suffered declensions from the highest standard in the case of the chosen people. It may be well doubted whether the absence of polygamy in the Roman Empire resulted in a higher condition of moral life than that which we find among the Jews. And it was pleaded with great force in the French Senate, in connection with the Divorce Act passed a few years ago, that the high marriage law of the Christian Church, when imposed upon persons who repudiated the Christian yoke, led not to a higher morality, but to a more flagrant immorality. At the same time it must

remain true that when a question arises as to the remarriage of a convert whose non-Christian marriage was solemnized under the express conditions of indissolubility and exclusive faithfulness, there are difficulties to meet which could hardly detain us where the earlier marriage never claimed to be either exclusive or indissoluble.

The great Indian Empire offers to an English theologian an obvious field for enquiries as to non-Christian conditions of marriage. What are the conditions of the marriage contract in India, and more particularly among (1) the Hindus and (2) the Musulmans, who together constitute the vast majority of the population?

The
Indian
Empire.

As regards India generally, it is necessary to clearly understand that there is no one marriage law either for the whole empire or for any tract of territory within it. The marriage laws of India are personal, and the State recognises as fully valid any established system of marriage law, whether written or customary, which is found in actual force in any religion, race, or tribe. It is thus that the British authority finds itself giving full support even to such systems as the temporary marriage of the Shia Musulmans, and the compulsory polyandry of the Nairs.

1. *Hinduism.*

The first point to be noticed as regards the marriage regulations of the Hindus is, that while the Hindu law of marriage, taken as a whole, is different at once from the Musulman and from the Christian law, there is also found a very great diversity of marriage laws among the Hindus themselves. Some of the tribes on the outer fringe of Hinduism are in the habit of forming alliances which are simply revolting; while the higher castes of Hindus are often found, at least in practice, to be governed by a very lofty conception of marriage. On this subject Sir William Hunter may be quoted:

Hinduism.

“The Hindu custom now forbids marriage between (1) persons of the same *gotra* or kindred and (2) persons of different castes. But this precise double rule has been arrived at only after many

intermediate experiments in endogamous and exogamous tribal life. The transitions are typified by the polyandry of Draupadi in the Mahábhárata, and by the multitudinous caste customs relating to marriage inheritance and the family tie which survive to this day. Such survivals constitute an important branch of law, in fact, the 'common law' of India, and furnish one of the chief difficulties in the way of Anglo-Indian codification. Thus, to take a single point, the rules regarding marriage exhibit every phase, from the compulsory polyandry of the Nairs, the permissive polyandry of the Játs, and the condonement of adultery with a husband's brother or kinsman among the Kárákat Vellálars of Madura, to the law of Levirate among the Ahírs and the Nuniyás, the legal re-marriage of widows among the low caste Hindus, and the stringent provisions against such re-marriages among the higher ones. Among the Koils, although polyandry is forgotten, the right of disposing of a girl in marriage still belongs, in certain cases, to the *maternal* uncle—a relic of the polyandric system of succession through females. This tribe also preserves the form of marriage by capture."¹

The lower forms of marriage law need not detain us in this enquiry. It is certainly not in unions so framed that we can discern the features of a marriage which Christians should hold to be necessarily binding. It is more important to ask whether the marriage contracts of the great body of the Hindus, and more particularly of the higher castes, ever rise to the requirements of the Christian contract. In other words, Are Hindu marriages found which forbid both polygamy and divorce?

(i.) *Polygamy.*

On the subject of polygamy may be quoted the teaching of Dr. Gooroodas Banerjee, in his valuable work, *The Hindu Law of Marriage and Stridhan*, a work, it may be added, which is of acknowledged authority with Indian lawyers. He says:²

"The marriage of a person having a wife living is prohibited in Christian countries; but Hindu law permits polygamy, though it does not approve the practice. It is true that polygamy is expressly

¹ Sir W. Hunter, *The Indian Empire* (1886), p. 195.

² Banerjee, *The Hindu Law of Marriage and Stridhan*, 1879, pp. 42-44.

allowed only under certain circumstances;¹ but considering the nature of some of these circumstances, and considering that a wife who speaks unkindly is allowed to be superseded without delay, it would follow that polygamy is not illegal in any case. Macnaghten,² Strange,³ and Shamacharan⁴ consider polygamy prohibited except for allowable reasons, and Pandit Iswarchandra Vidyasegar has cited the following passage of Manu :⁵

“ ‘For the first marriage of the twice-born classes a woman of the same class is recommended ; but for such as are impelled by inclination to marry again, women in the direct order of the classes are to be preferred. A Sudra woman only must be the wife of a Sudra ; she and a Vaisya of a Vaisya ; they two and a Cshatriya of a Cshatriya ; those three and a Brahmani of a Brahman :’

“as authority for the position that one cannot have more than one wife of equal caste with him at the same time, except for certain allowable reasons ; in other words, that polygamy such as now prevails is prohibited by the *sastras*. But his interpretation of the above text has called forth much hostile criticism and an elaborate rejoinder. It is not my object here to take part in the learned controversy as to what is the correct exposition of the above passage ; but I cannot help observing that the text quoted above refers, not to the number of wives that a man may have, but to the castes in which he can marry ;⁶ and I think I can safely affirm that the prohibition against polygamy, such as is inferred from this and other texts, is merely directory, and not imperative. The practice has always prevailed among the Hindus, and it reached its climax in Bengal as an incident of *Kulinism*. This last-named institution has exercised its pernicious influence upon marriage for several centuries ; but happily it is now fast becoming obsolete, and will soon become purely matter of history.”⁷

It appears then that “polygamy is not illegal in any case,” and that accordingly monogamy cannot be held to be required by the Hindu marriage contract.

[¹] Manu, ix. 77, 80, 81.

[²] *Principles of Hindu Law*, 58.

[³] *Hindu Law*, vol. i. 52.

[⁴] *Vyavastha Darpana*, 672.

[⁵] iii. 12, 13.

[⁶] See *Dyabhaga*, ch. ix. 2-6.

[⁷] For an account of Kulinism see Vidyasagar's first *Tract on Polygamy*, pp. 15-28.

(ii.) *Divorce.*

The position of Hinduism on the subject of divorce appears at first sight to be of the most unyielding character. Speaking generally, it may be asserted that death itself does not remove the tie which binds a woman to her husband, and that divorce is therefore out of the question. While, however, Hindu law knows nothing under ordinary circumstances of a divorce which would enable the wife to put away her husband, the practical putting away of a wife by a husband is a matter of every-day occurrence. The wife is simply superseded under the laws which admit polygamy.

On this subject Professor Banerjee may again be quoted:¹

“The provisions of the Hindu Law on this important subject are not altogether satisfactory. By that law marriage is regarded as a sacrament and an indissoluble union; and accordingly Manu declares,² ‘Neither by sale nor desertion can a wife be released from her husband’; and in another place he says, ‘Let mutual fidelity continue till death. This, in few words, may be considered the supreme law between husband and wife.’³ So far our law deals equally with both parties; but it goes further. While, as you have seen, it allows a man to have a plurality of wives, it forbids the second marriage of a woman even after the death of her first husband. It is true that some authorities permit a woman to take a second husband under certain circumstances. Thus Parasara, in his celebrated text, declares: ‘If the husband be missing or dead, or retired from the world, or impotent, or degraded, in these five calamities a woman may take another husband.’⁴ And Narada and Devala lay down rules to the same effect. But these rules, either like the practice of raising up issue by a kinsman on an appointed wife, relate to a primitive stage of Hindu society, in which rapid multiplication of the race was deemed an important object, or they may merely shew the existence of some difference of opinion among the Hindu sages on a point on which absolute unanimity of opinion can hardly be expected. The prevailing sentiment of Hindu society has for a long time been repugnant to the second marriage of a woman.

¹ Banerjee, *The Hindu Law of Marriage and Stridhan*, 1879, pp. 182-184.

[²] Manu, ix. 46.

[³] *Ibid.* ix. 101.

[⁴] Ch. iv. quoted in Vidyasagara's *Marriage of Hindu Widows*, p. 7.

Manu says: 'The holy nuptial texts are applied solely to virgins,¹ and nowhere on earth to girls who have lost their virginity, since those women are in general excluded from legal ceremonies.'² And in another place he declares: 'Nor is a second husband allowed in any part of this code to a virtuous woman.'³ Indeed a twice-married woman (*punarbhū*) and a disloyal wife (*swairini*) are considered as belonging to classes not very far removed from one another. Thus Narada says:⁴ 'Others are women who had a different husband before (*parapurā*); they are declared to be of seven kinds, in order as enumerated. Among these the twice-married woman is of three descriptions, and the disloyal wife of four sorts.' Their husbands are, according to Manu, 'to be avoided with great care';⁵ their children, says Harita, 'should not be admitted to social meetings';⁶ neither they nor their daughters are to be taken in marriage;⁷ and their sons, called the *punarbhava*, though formerly allowed to inherit in default of legitimate sons, as coming under one of the twelve descriptions of sons,⁸ are in the present age declared unfit to have any share in the heritage.⁹

"Thus while the practice of polygamy renders divorce unnecessary for the husband, the prohibition of the second marriage of a woman renders divorce useless for the wife. Accordingly, as a rule divorce in the ordinary sense of the word has been unknown in Hindu society.

"Sir T. Strange¹⁰ says that the right of divorce in the Hindu law is marital only; but this is not correct. If by divorce is meant dissolution of marriage, it is not obtainable even by the husband, for, according to Manu,¹¹ a wife can never be released from her husband; and if by the right of divorce is meant the right of either spouse to desert or to live separate from the other, such right, as you will presently see, belongs, under certain circumstances, to the wife as well as to the husband.

"But though not allowed by the general Hindu law, divorce and remarriage of a divorced wife are in some cases permitted by custom.¹²

[¹] The word in the original is *Kanya*, which has been explained to mean "a girl not deflowered, nor given in marriage." See Colebrooke's *Digest*, bk. iv. 168, commentary. [²] Manu, viii. 226. [³] *Ibid.* v. 162.

[⁴] Narada, xii. 46-54. [⁵] Manu, iii. 166. [⁶] Colebrooke's *Digest*, bk. iv. 162

[⁷] Colebrooke's *Digest*, bk. iv. 165. [⁸] Manu, ix. 158-160.

[⁹] General note to Manu, vi. 8; *Dattaka Mimamsa*, i. 64.

[¹⁰] 1 Strange, 52.

[¹¹] Manu, ix. 46.

[¹²] See Kudomee Dossee v. Joteeram Kolita, *Indian Law Reports*, 3 Calc. 305.

Such custom, however, prevails only among the inferior classes, especially in the Bombay Presidency;¹ and disputes concerning this subject are generally settled by *punchayats*, or caste assemblies. But it has been held that the Courts are not bound to recognise the authority of the caste to declare a marriage void, or to give permission to a woman to remarry."²

We conclude, therefore, that the marriage contract of the Hindus is never of the same stringent character as the Christian marriage contract, inasmuch as it does not forbid polygamy, and therefore also in practice, as far as the man is concerned, concedes divorce. It may, however, be admitted that, putting aside legal possibility, there is a considerable population of Hindus to whom polygamy and divorce are alike foreign, and that among these people there is in fact attained a high type of conjugal consent, which is not very readily distinguishable from the consent of Christian marriage. Nowhere is the recommendation of S. Paul to married converts of greater force than in the case of such a community. "If any brother hath a wife that believeth not, and she be pleased to dwell with him, let him not put her away. And the woman which hath an husband that believeth not, and if he be pleased to dwell with her, let her not leave him."³ It will, however, be maintained in the chapter on the remarriage of converts that even in such a community the status of marriage is something altogether different from the status of Christian marriage, and that, notwithstanding the character of the original consent, these marriages cannot claim to be regarded by Christians as essentially indissoluble.

2. *Islam.*

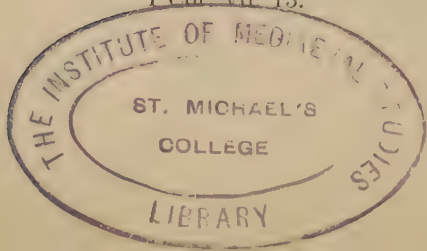
Islam.

Proceeding now to the consideration of the conditions of Muhammedan marriage, it is not disputed that under no Muhammedan system is marriage regarded as excluding either polygamy or divorce. In India two principal Muhammedan systems of law are commonly admitted, viz., (1) the Sunni Code, and (2) the Imamiyah or Shia Code.

¹ 1 Strange, 52.

² Reg. v. Sambhu Raghu, *Indian Law Reports*, 1 Bom. 352.

³ 1 Cor. vii. 13.



(i.) *The Sunni Code* is the system in force among the Sunni or orthodox Mussulmans.

(a) *Polygamy*. As regards polygamy, Neil Baillie's *Digest of Moohummudan Law (Hanifec)* summarises as follows :

"It is not lawful for any man to have more than four wives at the same time. And it is not lawful for a slave to marry more than two. . . . It is lawful for a free man to keep and cohabit with as many female slaves as he pleases ; but it is not permitted to a slave to keep and cohabit with any, even with the permission of his master. A free man may marry four women, whether they be slave or free. And a slave may marry two women, whether they be slave or free."¹

(b) *Divorce*. Two forms of divorce are recognised; the Sunni, or that which is agreeable to the Sunnat or traditions, and the Badai, or that which is new and irregular. By the Sunni form the husband pronounces the formula of repudiation three times, observing certain prescribed intervals between each pronouncement.² By the Badai form the repudiation is pronounced three times without the observance of the proper intervals, the three repudiations being occasionally thus made at one and the same time.³ By either the Sunni or the Badai form divorce is validly effected. "Repudiation by any husband who is sane and adult is effective, whether he be free or a slave, willing, or acting under compulsion ; and even though it were uttered in sport or jest, or by a mere slip of the tongue instead of another word."⁴ The husband is not required to give any reason for his action.

(ii.) *The Imamīyah or Shia Code* is the system of law in force among the Shia Musulmans.

(a) *Temporary marriages*. The most remarkable feature of the Shia code of marriage is its permission of temporary marriages. As regards the duration of these marriages Baillie writes as follows :

"The extent of the period is left entirely to the parties, who may prolong or shorten it to a year, a month, or a day ; only some limit must be distinctly specified, so as to guard the period from any extension or diminution. Even if the time were fixed at part of a

¹ Baillie, Neil B. E., *A Digest of Moohummudan Law*, i. containing the *Doctrines of the Hanifec Code of Jurisprudence*, 2nd edition, 1875, pp. 30, 31.

² *Ibid.* i. p. 206.

³ *Ibid.* i. p. 207.

⁴ *Ibid.* i. p. 208.

day, the contract would be lawful, provided that its limit is distinctly ascertained, as, for example, by the declining or setting of the sun.”¹

This remarkable perversion of the institution of marriage affects the Shia practice as regards both polygamy and divorce.

(b) *Polygamy.*

“When a free man has filled up the number of four wives by permanent contract, any in excess of that number is prohibited to him; and it is not lawful for him to have more than two slaves by contract out of the four. When a slave has filled up the number of four wives who are slaves, or two who are free women, or three, one of whom is free and the others are slaves, any in excess of these is prohibited to him. But each of the parties, that is, either the free man or the slave, may marry by temporary contracts as many as he pleases. So also he may retain them by virtue of bondage or right of property.”²

(c) *Divorce.* The Shia law of divorce is much the same as that of the Sunnis. Divorce is not, however, applicable to wives married by temporary contract. “There can be no repudiation of a legalised slave, or of a woman enjoyed under a *moota* or temporary contract, even though she be free.”³

It thus appears that under neither of the Musulman codes does the most solemn marriage preclude either polygamy or divorce; and there is this great difference between Musulmans and Hindus, that whereas a large number of Hindus may be said to contract marriage without a thought of the possibility of either polygamy or divorce, it would probably be true to say that no Musulman or Musulmani, whether Sunni or Shia, ever contracts a marriage without the full knowledge that it is subject to the possibilities at once of polygamy and of divorce. The Musulman contract of marriage is accordingly never in any case the same contract as the Christian contract of marriage.

The character of marriage as it is actually found after the Fall and outside Christianity has in this chapter been considered as it is illustrated, first by the Chosen People, and, secondly, by other non-Christian societies, of whom the Hindu and Musulman communities of India have been taken as sufficient

¹ Baillie, *Digest*, ii. *Imameea*, p. 42.

² *Ibid.* p. 28.

³ *Ibid.* p. 110.

examples. A larger number of examples appears to be unnecessary, because the prevalence of (1) polygamy, or (2) divorce, or (3) both among non-Christian peoples is matter of notoriety. Wherever these practices are found it is clear that the marriage contract is not the same as that which alone is recognized by the prevalent traditions of the Christian Church; and in dealing with such contracts it is impossible to treat them as necessarily involving, like Christian marriages, either exclusive faithfulness or the indissoluble character. At the same time it would be indeed a superficial view which should on this ground stigmatize non-Christian marriages as mere unions of fornication. With all their defects they retain certain features of the original Divine institution, of which they are so far forth survivals; and the fact that such defective unions were permitted and recognized among the Chosen People, during the time of estrangement which preceded the Redemption, should be abundant warning to us rather to search out and strengthen whatever they may retain of the original righteousness of marriage, than to throw them contemptuously aside. Still more imperative does this careful consideration become in those rare instances which are exemplified by the practice of some of the Hindus, where the conjugal consent is given and maintained at the same high level, as regards exclusiveness and indissolubility, as is the case with Christian marriages. Failing the sanctifying power of the indwelling Spirit, such marriages must necessarily lack the special character of holiness which attaches to Christian marriage; and where this character is lacking, the Christian Church, as will be seen in chapter viii., is not prepared to admit that a marriage is necessarily indissoluble, however high may have been the conditions of the contract. But Saint Paul can say of non-Christian marriages: "If any brother hath a wife that believeth not, and she be pleased to dwell with him, let him not put her away. And the woman which hath an husband that believeth not, and if he be pleased to dwell with her, let her not leave him."¹ And clearly the higher the conditions of the union, the more constraining does this counsel become.

Where polygamy or divorce is admitted, the contract differs from the Christian contract.

Yet these marriages are survivals of the Divine institution.

The sanctification of the Spirit is in all cases lacking.

But the higher the conditions of the union, the more constraining is S. Paul's counsel to the married convert.

¹ 1 Cor. vii. 12, 13.

CHAPTER VI

OF CHRISTIAN, OR HOLY, MATRIMONY

The
Rationale
of
Christian
matrimony.

IT pleased Almighty GOD to suffer the human race to remain for thousands of years after the Fall in estrangement and degradation, training men gradually by various means and particularly by that "law" of the Chosen People, which was a *pædagogus* to bring them to Christ.¹ At length, when "the fulness of the time was come, He sent forth His Son, born of a woman;"² and the power of the life and death of Christ our Lord redeemed the whole fallen race. But that blessed Redemption, effected for all, needed to be applied to each: and by the gift of the Comforter, GOD provided the means by which this application should be made. In Christian Baptism the Holy Ghost, descending on a human being who offered himself in faith and penitence, first³ removed that pressing burden of guilt which had weighed him down and kept him in a state of sin, and by removing it removed the cause of GOD's estrangement: and then, not staying His mercies at that blessedness of guilt removed, He came and tabernacled within the man, making his very body the temple of His own Divine indwelling. In so doing He made him a member or limb of Christ, the child of GOD, and an inheritor of the kingdom of Heaven. It was indeed a regeneration, a new birth. Henceforth the Christian was in entirely different relations to GOD, to the spirits of good and to the spirits of evil, to his fellow-men, and to all things created. He was in a state of grace; he was a member of Christ's mystical body; he was a temple of GOD the

¹ Gal. iii. 24.

² Gal. iv. 4.

³ In logical order: in order of time no distinction can be made.

Holy Ghost. Thus blessed, he was now able to "go on from strength to strength."¹ In his Confirmation he was strengthened and confirmed in the new life of his Baptism by the gifts of the same Holy Spirit; in his Communion his soul was continually strengthened and refreshed by the Body and Blood of Christ. When in the natural progress of his life he contracted a union with a Christian woman, the relation had no longer the same character of desolation which had cursed the marriages of his fathers through the ages past. They had brought in every case a fallen nature unredeemed to mate with a fallen nature unredeemed, and from no such mating was it possible that there could ensue holiness of estate, or perfectness of union. To an estate neither holy nor perfect there had in a sense been conceded certain licenses themselves too surely indicating both unholiness and imperfection. But to the Christian all was changed. Himself aglow with the Divine indwelling, he contracted a union with a baptized woman in whose body, as in his own, the Spirit dwelt. The mutual consent or contract contemplated nothing short of the Divine ordinance, for any grave breach of that ordinance would undo the work of redemption, and once more sink not one only but both into that state of sin which was estrangement from God. Recurring then to the Divine ordinance, marriage needed to be the exclusive union of one man with one woman, and it needed to be till death they did part. Then in the consummation following the contract, the contract was concluded and ratified, and the estate commenced. It was a holy estate, being the estate of matrimony between two persons in whom the Spirit dwelt, and as between such being now once more according to God's holy ordinance. In this holy estate which the contract preceded, and the consummation initiated, there was a marvellous oneness of holy life, a sense of mutual yearning mysteriously satisfied in a peacefulness of mutual possession, an interpenetration of the life of each in that of the other, all in fact which is implied in that *μέγα μυστήριον*, that mighty mystery, which no man will ever comprehend in all the depths of its far-reaching sympathies, but which is as much

¹ Psalm lxxxiv. 7.

the heritage of high Christian union to-day as it was in the times of the Apostles. It is a union like the union of Christ with His Church. It is holy ground. Yet for all this it is the union of those who, redeemed though they be, are yet not free from the infirmities of the Fall, from the sinful tendencies of the fallen nature, from the imperfections and the jarrings of elements not entirely brought into accord. Holy though the estate of Christian marriage is, yet in its closest and most intimate union there must ever pass at least the shadow of a shame. Paradise has been, and Paradise will be, but it is not Paradise now. The redeemed warriors of the Church Militant are neither the unengaged nor the triumphant; they are in the battle, and they have had their wounds, and their wounds are smarting still. And, though grace be preserved both in husband and in wife, yet every imperfection of each must tend to lessen the perfectness of the union itself, and to make it by so much fail to realize that highest ideal which is as the union of Christ with His Church.

So far by way of general statement and to distinguish Christian marriage from marriage outside Christianity. Argument in support of what is here asserted will be brought forward as the characteristic features of the estate come to be considered in detail.

A. OF THE ESSENTIALS OF CHRISTIAN MARRIAGE.

The Divine institution alone concerned. A question which obviously lies at the threshold of any investigation into the character of Christian marriage is the question, What is essential and what is not essential for the constitution of the holy estate of Christian matrimony? In making this enquiry it may not be useless to repeat that we have nothing here to do either with the civil regulations of particular states, or with the merely ecclesiastical regulations of particular churches. It is the Divine institution which it is sought to elucidate. Thus, for instance, it is indisputable that some public solemnization, ecclesiastical or civil, is required by the marriage law of England (since Lord Hardwicke's Act) before a marriage can be not only recognisable, but in any

sense valid. Without the solemnization a marriage is simply null and void. But this is nothing to the point as regards the Divine institution. Again, it was a maxim of the law of Rome that "consent, not cohabitation, makes a marriage," and the status of marriage was thus acknowledged as immediately resulting from the contract alone; but this again is nothing to the point as regards the Divine institution. So again, a particular church may require for the better ordering of Christian life that no marriage shall be recognised which is entered into without the presence of a priest, but such a requirement may be made without a thought that the presence of the priest forms any part of the Divine institution of marriage, considered in itself, and apart from the calls of expediency. It may be decided by an ecclesiastical or civil court that certain subsidiary facts shall be taken as sufficient evidence of a *copula carnalis*: but if the copula be of the essence of marriage as Divinely instituted, no subsidiary evidence, however conclusive it may be held by the practice of the court, can make a union to be a marriage in its own essential character, if the copula has not in fact found place. This enquiry then is concerned neither with civil nor with ecclesiastical regulations, but with the essential character of Holy Matrimony as instituted by God, and restored by Him among the Christian people.

There are four heads of enquiry which emerge from the theology of the schools and from the practice of the courts. (1) Is it indispensable that the persons to be married should both be baptized? (2) Is the public solemnization, with the priestly benediction, a necessary feature? (3) Is it essential that there should be a preliminary contract, whether with or without the priestly benediction? (4) Is the *copula carnalis* merely an ordinary accompaniment of the marriage state, or is there no marriage state without it? Whether it is in every case indispensable that both persons should have been baptized has been disputed, and indeed rightly or wrongly some marriages in which only one of the persons has been baptized have been celebrated with Christian rites, both in the East and in the West. Many theologians in the East, and some in the West, maintain that without the priestly benediction there is no

Four
heads of
enquiry.

Christian marriage. A long array of theologians and of canonists in the West have held that neither the benediction nor the copula is of the essence of marriage, but that a marriage is made by the expression of the contract and by it alone. Other theologians and canonists have maintained the essential character of the copula, not indeed alone, but as following on the contract; and this, as will be seen, is the view which has really ruled the practice of the courts, and which alone can harmonize the difficulties of the subject.

(1) *Is it indispensable that both the parties to a marriage should have been baptized?*

Baptism is
essential.

This question involves a long and difficult enquiry which can hardly be satisfactorily attempted, apart from the cognate question of the divorce and remarriage of converts. Both these questions will accordingly be treated together in chapter VIII., to which reference may be made. Here the conclusion of that chapter as to the present question may be anticipated. It is that no marriage can be recognised as Christian marriage in which at the time of first entering upon the marriage state one of the parties was baptized, and the other unbaptized: unless indeed and until the unbaptized partner receive baptism.

(2) *Is the public solemnization with the priestly benediction a necessary feature?*

Roman law
and
customs
should be
consulted.

It is impossible to understand the significance of the testimony of history upon the subject of the essentials of Christian marriage without a clear grasp of the requirements of Roman law, and of the chief features of Roman custom. The Christian Church for many centuries simply accepted and conformed to the Roman law and Roman customs so far as was compatible with Christian views, commonly confirming the unions by religious benedictions. Now it cannot be too clearly stated that in the Roman law the one essential feature of marriage was the mutual consent of the parties. Where this consent could be supported by any sort of sufficient evidence, there a marriage was admitted; while on the other hand no amount of external formality, not even completed documentary contracts, would establish a marriage if this consent could be disproved. Quintilian lays this down very expressly: "There is no bar, which

(i) Roman
Law.
Mutual
consent
the one
essential
feature.

renders a marriage by the intention of the contracting parties to be less valid, even though the tables have not been sealed. For it will have been of no service to have sealed the tables if it shall appear that the intention of matrimony did not exist."¹ Similarly a constitution of Diocletian and Maximin provides that when there is no marriage, instruments made to prove marriage are invalid, but that where there are no such instruments a marriage lawfully contracted is not void.² The best evidence of marriage was cohabitation *matrimonii causa*; and the *matrimonii causa* might be proved in various ways. No form of solemnization at any time concluded a marriage, but every such form, and in particular the bringing home of the bride, was evidence of marital intention.³ It is probable that the great stress laid on the bringing home of the bride as a proof of marital intention was really due to the fact that it supplied the best evidence of the copula usually available: yet the copula was never an essential feature of marriage according to the Roman law. Perhaps more than any other system of human law the Roman law regarded marriage as a contract pure and simple. Like any other contract it was voidable at any time by mutual consent, and when we come to treat of the subject of divorce it will be seen that the Christian Church in the Eastern empire was unable to finally overthrow the legal sanction to divorce by mutual consent, till the close of the ninth century. It is clear that under these circumstances the status, of which the copula is the most essential characteristic, was not held to have satisfied the contract, or even to have modified it in any important degree. At any time the contracting parties were as free to rescind their contract by mutual consent as they had been to form it. There is thus no ground for surprise in the dictum of Ulpian, which became an axiom

¹ Quintilian, *Inst.* v. 11, 32. "Nihil obstat, quo minus justum matrimonium sit mente cœuntium, etiamsi tabulæ signatæ non fuerint. Nihil enim proderit signasse tabulas, si mentem matrimonii non fuisse constabit."

² *Code*, v. 4. 13. "Neque sine nuptiis instrumenta facta matrimonii ad probationem sunt idonea, diversum veritate continente; neque non interpositis instrumentis jure contractum matrimonium irritum est, quum omissa quoque scriptura cetera nuptiarum judicia non sunt irrita."

³ *Code*, v. 3. 6.

of the Roman law, that "consent, not cohabitation, makes a marriage (*nuptias non concubitus sed consensus facit*).¹" The adoption of this maxim in later times into the Canon law, alike of the East and of the West, has led to many difficulties, not the least of them being that no system of Christian law can accord the freedom of divorce, which is necessary to the consistent maintenance of the theory of mere contract. As regards the Roman law, however, the maxim is entirely intelligible. Marriage was a contract: and for a contract the one essential was sufficient evidence of mutual consent.

By the Roman Law, then, it was not ordinarily essential for the validity of a marriage that there should be (1) any outward solemnization, or (2) the sexual union. What was essential was (3) mutual consent, and mutual consent alone.

(ii) Roman
customs.

These
varied
with the
class of
marriage
adopted.

While, however, it was not essential to the validity of a marriage that it should be preceded by any outward formalities, custom with the Romans as with other peoples required that the marriage relation should be inaugurated with certain significant ceremonies.¹ These would to some extent vary with the class of marriage adopted. Marriages were of two principal characters; either (1) they established a *conventio in manum*, bringing the wife into the position of entire legal subordination to the husband as head of the family, a position which was described as being under the husband's "hand," or (2) they did not establish such a *conventio*, and the wife remained more independent and from the legal standpoint less entirely identified with the husband's family.

(a)
Marriages
establish-
ing the
Manus.

Marriages which established a *conventio in manum* might be effected in any one of three ways:

(a) Con-
farreatio.

(a.) *Confarreatio*. This appears to have been the most ancient, the most honoured, and the most religious form of marriage. The contract had to be made in the presence of ten witnesses. It was accompanied by a religious ceremony in which a sheep was sacrificed and its skin spread over two

¹ As regards the matter of the next few pages I wish to disclaim all pretension to original work in the field of *classical* antiquity. The points noticed will be found in most standard works upon the subject. I have of course verified the references.—O. D. W.

chairs upon which the bride and bridegroom sat down with heads covered.¹ The marriage was then ratified by the pronouncement of a solemn formula or prayer. Another sacrifice followed and a further religious ceremony in which the *panis farreus* was employed. This was a cake made of *far* with the *mola salsa* prepared by the Vestal Virgins.² The marriage by *confarreatio* was apparently the only one of the Roman forms of marriage which necessarily involved any religious ceremony. It is obviously therefore the one form of marriage which would have failed to commend itself to the Christian community, if it had been in vogue at the Imperial period. It appears, however, to have dropped out of use. Gaius alluding to the marriage by *confarreatio* says that this legal observance (*hoc jus*) was in use even in his time for *Flamines Majores* and some others.³ Even in the time of Tiberius it was only observed by a few.

(β.) *Co-emptio*. This was a conveyance of the woman by (β) *mancipatio*, and might be described as a fictitious sale *per aes et libram*, similar in character to the fictitious sales employed in emancipation, in testamentary dispositions, and in some other processes.⁴ Co-emptio.

(γ) *Usus*. A less formal method of marriage than either (γ) *Usus*, *confarreatio* or *co-emptio*, but equally effective in bringing the wife "within the hand of the husband, and placing her in the same position of legal subordination as would be occupied by his daughter," was the method of *Usus*.

If a woman lived with a man for a whole year as his wife, this not only established a marriage, but brought the woman within the husband's hand. The consent to live together as man and wife was the marriage: the *usus* for a year had as its result the *manus*, the legal absorption and subordination of the wife in the family of the husband. The law of the twelve tables provided that if a woman did not wish to come under the legal authority of the husband in this way, she was to absent herself from his companionship for a period of three

¹ Servius *ad Vergilii, Æneid*, iv. 374.

² Servius *ad Verg. Eclog.* viii. 82.

³ Gaius, *Institutes*, i. 112.

⁴ *Ibid.* i. 113.

nights (*trinoctium*), every year, and so to break the *usus* of the year.

(b)
Marriages
not estab-
lishing the
manus.

In these three ways—*Confarreatio*, *Coemptio*, *Usus*—there might be effected a marriage which would establish a *conventio in manum*. But a perfectly legal marriage might be effected without establishing the *conventio in manum*, and in the time of the Empire it was certainly the exception to contract marriages with the *manus*, the vast majority of marriages being marriages without the *manus*. These marriages were contracted by the mere interchange of consent without necessarily involving any written contract, or indeed any formality of any kind. Certain formalities and ceremonies were, however, usual even in marriages without the *manus*.

In practice
only these
were in use
among
Christians.

Practically the marriages with which Christians had to do were not much concerned with any one of the three ancient forms which effected a *conventio in manum*; and in considering the influence of Roman custom upon the Christian community it is not with the interesting distinctions and ceremonies of the most ancient Romans that we have to do, but with the ceremonies actually current in the time of the Empire.

There may have been some rare instances of Christian marriages which established the *conventio in manum*; but speaking generally it may be said that as regards Christian marriage the statement of the three forms of marriages *in manum* may be taken as of no other import than to clear the ground; and it is with the usual ceremonies of marriages contracted without the *manus*, and with them alone, that this enquiry is concerned. It is concerned with them because the Christian community would naturally adopt any outward ceremonies in common use, which were innocent as involving neither immoral intention nor religious unfaithfulness. At the same time it must not be forgotten that no one of these ceremonies, however important it might be held, was required for the validity of the marriage, which depended on the consent of the parties, and on that alone. Hence Christians would reject, or at least tend to reject, any customs which were either immoral or religiously unfaithful; and on the other hand it would be an obvious prompting from

¹ Gaius, *Institutes*, i. 110.

the first that the secular formalities should be supplemented by some religious rite acceptable to Christians, which should invoke the Divine benediction on so solemn an occasion. This is, in fact, exactly what we find.

The ceremonies of a marriage not involving the *manus* would be divided into (a) the ceremonies of the *Sponsalia*, and (β) those of the Wedding.

(a) *The Sponsalia*. It was a common but apparently by no means universal practice among the Romans to anticipate the formal celebration of the wedding by a formal betrothal known as *sponsalia*. *Sponsalia* are defined by a legal writer as "the recital and promise of future nuptials" (*Sponsalia sunt mentio et repromissio nuptiarum futurarum*).¹

It was the practice on some day prior to the actual wedding for the parties interested to meet at the house of the bride's father, and there to settle the contract, itself commonly spoken of as *sponsalia*, which was written on tablets (*tabulae legitimae*), and signed by both the betrothed parties in the presence of witnesses.² It would appear to have been at the *sponsalia* rather than on the actual wedding day that presents (*arrhae*) were formally made, to represent or constitute the *donatio propter nuptias* or settlement by the husband on the wife; and this formal giving of presents was often accompanied at least in the Imperial period by (1) a kiss,³ (2) by the placing of a ring (*annulus pronubus*; probably part of the *arrhae*) by the man upon the woman's finger, and (3) by the joining of hands (*conluctatio manuum*). The last function of this preliminary contract, probably often deferred till some later opportunity, was the settlement of the wedding day, for which the auspices were commonly consulted.⁴

If now it be supposed that the contracting parties were Christians, it is obvious that while any reference to auspices would be unacceptable, the rest of the ceremonies of the *sponsalia* would not present any feature open to objection.

¹ Florentinus, in *Dig.* 23. tit. 1. s. 1.

² Juvenal, *Sat.* ii. 119. ff; vi. 25, 200. Gellius, iv. 4.

³ *Osculo interveniente. Cod. Theod.* iii. 5. 5.

⁴ Cicero. *De Div.* i. 16.

The meeting of the parties interested at the house of the bride's father, the preparation of the marriage contract, its formal signature by the man and by the woman before witnesses, the presents, the kiss, the ring, and the joining of hands were all perfectly innocent. The question whether the benediction of the Christian priest was commonly given at the *sponsalia* or at the later wedding festivities has been sometimes raised; but there can be very little doubt that only one benediction was originally given, and while this might as the marriage benediction be given anywhere in connexion with the marriage ceremonies, it would probably, in cases where separate *sponsalia* were solemnized, be given rather at the *sponsalia* than at the subsequent festivities, as being the graver and quieter expression of the contract.

It is, however, certain that formal *sponsalia* were by no means universal, and not in the least essential to the validity of a marriage. A Christian, like any other Roman, might prefer to be married without the previous ceremony of *sponsalia*, or rather without allowing any interval to elapse between the *sponsalia* and the actual marriage. The exact order of the ceremonies is to some extent matter of conjecture even among non-Christians, and with Christians there can be very little doubt that at first there would be some diversity of practice both as regards the character of Christian ceremonies introduced and as regards the time of their introduction.

(β) *The Wedding.* The actual wedding-day was marked by the adorning of the bride in the earlier part of the day, and by the bridal procession to the house of the husband in the evening, with the ceremonial reception on arriving at the house.

A Christian
marriage
supposed.

We may now attempt to follow the order of a Christian marriage solemnized at any time during the first three centuries. We will suppose that the *sponsalia* had not taken place, but that the important features of the *sponsalia* had to be embodied in the ceremonies of the wedding-day. That day, which non-Christians fixed by consultation of the auspices, would not be so fixed by the Christians; but it would commonly be matter of agreement not only between the parties, but also with the bishop or priest, whose approval and benediction would be sought.

I. *The adornment of the bride.* (1) The vesting. It was usual on the evening before or on the wedding-day to vest the bride in

a. The *tunica recta*.¹ This was a long white robe with a purple fringe, or adorned with ribands.

b. A girdle (*corona, cingulum, zona*²), which encircled the waist, and was to be untied by the husband in the evening.

c. The bridal veil. This was commonly called *flammeum*, because it was of a bright yellow colour.³

d. The shoes, of the same bright yellow colour as the veil.⁴

(2) The loosing of the hair.

a. The bride's hair was often divided with the point of a spear;⁵

b. And often altogether let down when the bride was brought to her husband. This custom is referred to by two Christian writers, Ausonius and Optatus.⁶ Probably the dividing by the spear and the unbound tresses were ceremonial relics of the marriage by capture. The hair is not, however, shewn as unbound in the gilded glasses which appear to represent the ceremony of a Christian marriage, but as

c. Bound by the *reticulum*, a net, which served the purpose of keeping the otherwise unbound tresses in restraint.⁷

(3) The coronation. The bride was crowned with a floral wreath. This ceremony is of great interest, as being the original of the crowning of bride and bridegroom, which forms so striking a feature of the marriage rite of the Eastern churches. It appears that at first this crowning had a heathen significance. The crown was of the *verbena*, sacred to Venus,

¹ Pliny, *Hist. Nat.* viii. 48. ² Paulus Diaconus, 63. Festus, s. v. *Cingulo*.

³ Pliny, *Hist. Nat.* xxi. 8. Schol. ad Juven. vi. 225. For use by Christians, see the gilded glasses and sepulchral monuments in Garrucci.

⁴ Catullus, lxi. 10, *luteum pede soccum*. Paintings at Herculaneum and Pompeii.

⁵ Ovid, *Fasti*, ii. 560. Arnobius, *Adv. Gent.* ii. c. 67. Plutarch, *Quaestiones Romanae*, p. 285 (q. 87).

⁶ Ausonius, *Idyll* xiii.: *dederatque comam diffundere ventis*. Optatus, lib. vi. 95: *solverant crinem*.

⁷ See also Festus, p. 339, for a peculiar dressing of the hair with three tresses on each side. "Senis crinibus nubentes ornantur, quod is ornatus vetustissimus fuit; quidam quod eo vestales virgines ormentur."

with other flowers which may or may not have had a similar religious import. Tertullian accordingly condemns the practice, and makes it an argument against marriages with non-Christians as involving the Christian partner in idolatry.¹ It would appear, therefore, that in marriages where both parties were Christians the coronation was often omitted. It is, however, certain that the coronation was often retained in Christian marriages, and that it eventually became universal throughout the East.² In Christian usage it came to symbolize the marriage of Christ with His Church. To S. Chrysostom it signified victory over lust.³

II. *The ceremonies of the sponsalia.* The bride being thus prepared for the wedding in her father's house, the bridegroom and his friends might be received, and if the *sponsalia* had not already been effected, the due solemnization of the contract would now take place. The ceremonies of the contract appear to have been :

1. The subsidiary ceremonies.
 - (a) The *arrhae*.
 - (b) The ring.
 - (c) The kiss.
 - (d) The joining of hands.
2. The signing of the tables.
3. The benediction of the priest.
4. The congratulations of the friends.

¹ Tertullian, *De Corona*, c. 13: "Coronant et nuptiae sponsos, ideo non nubamus ethnicis, ne nos ad idololatriam usque deducant, a qua apud illos nuptiae incipiunt: habes legem a Patriarchis quidem, habes Apostolum in Domino nubere jubentem."

² S. Clement of Alexandria. "εἰσὶ γὰρ, εἰσὶ καθάπερ ἐν τοῖς ἀγῶσι τοῖς γυμνικοῖς, οὕτως δὲ καὶ κατὰ τὴν ἐκκλησίαν, στέφανοι ἀνδρῶν καὶ παίδων." (*Stromata* vii. c. 11.)

"στέφανον μὲν τῆς γυναικὸς, τὸν ἄνδρα ὑποληπτέον· ἀνδρὸς δὲ, τὸν γάμον· ἄνθη δὲ τοῦ γάμου τὰ τέκνα ἀμφοῖν. ἃ δὲ τῶν σαρκικῶν λειμῶνων ὁ θεὸς δρέπτεται γεωργός. στέφανος δὲ γερόντων, τέκνα τέκνων." (*Paedagog.* ii. c. 8.)

S. Gregory Nazianzen. "τά δ' ἄλλα δ' ὑμῖν μελέτω καὶ στεφανούτω ὁ πατήρ ὡς ἠῴζατο, τοῦτο γὰρ καὶ εἶπον γάμοις παραγεγόναμεν, ἐτυπώσαμεν ἐνείνων μὲν γὰρ εἶναι τοὺς στεφάνους, ἡμῶν δὲ τὰς εὐχάς." (*Epist.* 171.) See also Garrucci, tom. iii., Tav. 198. 3., Tav. 195. 11.

³ S. Chrysostom. "διὰ τοῦτο στέφανοι ταῖς κεφαλαῖς ἐπιτίθενται, σύμβολον τῆς νικῆς, ὅτι ἀήττητοι γενόμενοι, οὕτω προσέρχονται τῇ εὐνῇ, ὅτι μὴ κατηγωνίσθησαν ὑπὸ τῆς ἡδονῆς." (*Hom.* ix. in 1 Tim.)

1. Of the ceremonies here grouped together as "subsidiary," (a) the *arrhae* were presents given as an earnest of the *donatio propter nuptias*, or property settled by the husband upon the wife at marriage. The giving of these "earnests" was a usual formality, which was doubtless accepted by the Christians, as it is retained in the Christian services of betrothal, which prescribe that gold and silver shall be placed upon the book with the ring.

(b) The ring (*annulus pronubus*) may have originally formed part of the *arrhae*.¹ It is not mentioned among the ceremonies of the earlier Roman marriages, but was in use under the empire.² Its beautiful symbolism of an endless bond would commend itself with a marked significance to the Christian community. The ring has been commonly retained in Christian services of espousal. It is represented in the gilded glasses,³ which shew the accompaniments of marriage.

(c) The kiss was a recognised ceremony in the Imperial period, and was evidently accepted by the Christians without difficulty. Tertullian speaks more than once of the kiss and the joining of the right hands as calling for the veiling of the bride in this first contact with her husband.⁴ The earnest, the ring, and the kiss are all mentioned as usual in the Civil Code.⁵

The kiss was often retained in Christian weddings of later date as part of the *pax*. The officiant gave the kiss of peace to the bridegroom, and the bridegroom to the bride. This appears to be the origin of the custom of the kiss which is maintained in many churches in England.

(d) The joining of hands (*conluctatio manuum*) was another

¹ Nicholas, *Respons. ad consulta Bulgarorum*, Resp. iii.

² Juv. vi. 27; Pliny, *H. N.* xxxiii. 1; Tertull. *Apolog.* 6.

³ Garrucci, tom. iii. Tav. 195. 11.

⁴ Tertullian. "Atquin etiam apud ethnicos velatae ad virum ducuntur. Si autem ad desponsationem velantur virgines, quia et corpore et spiritu masculo mixtae sunt per osculum et dextras, per quae primum resignarunt pudorem spiritus. . . ." (*De Virginibus Velandis*, c. 11.)

"De illis (*virginibus*) tamen quae sponsis dicantur, constanter super meum modulum pronuntiare contestarique possum velandas ex ea die esse, qua ad primum viri corpus, osculo et dextera expaverint." (*De oratione*, c. 22.)

⁵ Cod. v. 3, 16.

ceremony in common use in the time of the Empire. Tertullian's references to it as one of the reasons for veiling a betrothed virgin have been already noticed. In course of time the joining of hands among Christians was performed by the priest.¹ Representations of the *conluctatio manuum* are preserved in various articles which have come down to us from Christian antiquity.² The ceremony has assumed a prominent place in Christian services of espousal.

2. The actual contract was centred in the signing of the tables (*tabulæ nuptiales*).³ The business of the dowry, which was an important feature of the Roman marriage, came in here. The bride and the bridegroom both signed their names in the presence of witnesses. S. Ambrose speaks of the witnesses of the *sponsalia* in his day and among Christians as ten in number, the same number as had been required by the old rites of the marriage by *confarreatio*.⁴

3. It would probably be after the signing of the tables that the benediction of the Christian priest, if present, would be sought. That this benediction was introduced very early is certain. The authorities will be noticed presently in connexion with the subject of the significance to be attached to the benediction.

4. The congratulations of the friends constituted a feature of some importance in a Roman marriage. The witnesses to the contract, and presumably any other friends present, wished the bride and bridegroom good fortune (the *feliciter*⁵). Most probably the gilded glasses which have come down to us from the early Christians with representations of the marriage ceremony are connected with this practice. They bear such legends as (1) VIVATIS IN DEO, (2) POMPEIANE TEODORA VIBATIS, (3) MARTVRA-EPECTETE-VIVATIS, (4) PIE ZESIS, (5) FELICITER ZESES-SIRTCA-LUCIFER-VIVAS-CUMTVIS.⁶

¹ S. Gregory Nazianzen, *Epist.* lvii.

² (a) Cut Stone of the Abbate Andreani; (b) Ring (Buonarotti, Vetri 208); (c, d) Gilded Glasses (Garrucci); (e) Medal on the marriage of Pulcheria with Marcian.—Mozzoni, *Tav. ist. eccl.* v. 55.

³ Juvenal, ii. 119; Tacitus, *Ann.* xi. 30.

⁴ S. Ambrose, *De laps. virg.* 5: "Nam si inter decem testes confectis spon-salibus, nuptiis consummatis, quævis femina viro conjuncta mortali, non sine magno periculo perpetrat adulterium."

⁵ Juvenal, *Sat.* ii. 119: "Signatæ tabulæ, dictum 'feliciter.'"

⁶ Garrucci, tom. iii. Tavv. 195. 11; 198. 4; 195. 12; 199. 3; 198. 3.

III. *The Home-coming of the Bride.*—The leading home of the bride in triumphal procession in the evening, and her reception in her new home, formed the crowning incident of the marriage ceremonies. It constituted, as has been noticed, the best proof of marriage, as supplying the best evidence of marital intention. It is probable that some of the features of the ordinary Roman procession would partake of the heathen character, and these the Christian would feel constrained to avoid. It is certain, however, that even the Christians regarded the marriage ceremonies as incomplete till the leading home of the bride had taken place.¹ For them, as for their non-Christian neighbours, there would doubtless be the torchlight procession, the supporters and friends in attendance, the singing by the way, the distaff and the spindle in the new housewife's hands. For them as for their neighbours would be the ceremonial salutation of the door-posts, and the carrying of the bride across the threshold of her new home. The husband would be ready with the fire and water to welcome her, the marriage feast would be set out, the *lectus genialis* solemnly prepared. But in connexion with the evening festivities there was a danger to the Christian bridal party, not now directly from the customs of heathen worship, but from the license and immorality which heathen usage had spread around. Unseemly songs and unseemly practices, into which there is no occasion to enquire in detail, were but too commonly introduced at marriage festivals, and formed one of the curses of custom against which for centuries the Christian teacher had to raise his voice in protest.²

The ceremonies of a Christian marriage, such as they might have been at any time during the first three centuries of Christianity, have thus been briefly reviewed. If, as was perhaps most commonly the case, the *sponsalia* were effected

¹ Sidon, *Ep.* i. 5: "Nondum cuncta thalamorum pompa defremuit, quia necdum ad mariti domum nova nupta migravit."

² S. Chrysostom, in *Epist. I. ad Corinth*, Hom. xii.: "Καὶ γὰρ χορεΐαι καὶ κῦμβαλα καὶ αὐλοὶ καὶ ῥήματα καὶ ᾄσματα αἰσχρὰ καὶ μέθαι καὶ κῶμοι καὶ πολλὸς ὁ τοῦ διαβόλου τότε ἐπεισάγεται φορτὴς." See also S. Chrysostom, *Hom.* 48, 6, in *Gen.* c. 24, and *Hom.* 56 in *Gen.* c. 29.

separately at some date prior to the actual marriage, the usages classed above under the second heading as the "ceremonies of the *sponsalia*" would take place then, while those classed under the first and third heads as the "adorning of the bride," and the "leading" her "home," would be proper to the actual wedding-day. In time there came to be in such cases a double benediction, one at the *sponsalia* and one at the wedding; but the earliest ages have left no indications of the practice.

Christian marriage was Roman marriage, with a benediction introduced.

It took place in the house,

but later in the church.

This review of the solemnities accompanying a marriage is necessary for the proper understanding of the Christian rites. The marriage of the early Christians was simply the marriage of Roman law and Roman custom, with sometimes, probably almost always, a Christian prayer of benediction somewhere introduced. It took place, as such marriages always had taken place, in the houses of the parties. The ceremonies of the *sponsalia*, including the formal signing of the tables, were effected at the house of the bride's father; the solemn reception of the bride in the evening was in the house of the bridegroom, now become her own. With the removal of persecution and the recognition of Christian worship, a most important change ensued. Whereas hitherto the marriage had been solemnized in the house, it now became usual to repair to the church for the priest's benediction. There was probably a reason for this, besides the natural wish to give all attainable sacredness to the surroundings. It appears that at an early date it was usual to celebrate the Holy Eucharist either before or after the marriage blessing.¹ Those who desired this highest hallowing of their new estate would necessarily arrange for the ceremonies to take place in the church. In a short time the practice became so generally established, that the council of Laodicea (? A.D. 375) was able to prohibit the solemnization of marriages in houses altogether,² and it has ever since been the practice of Christendom to give the marriage benediction in the sacred temples of the Church. The immediate effect would be, so to say, to alter the centre of gravity of the

¹ Tertullian, *Ad Uxorem* II. 9; "*confirmat oblatio*."

² Canon 58.

ceremonies. Whereas in the earliest period the benediction had been given, as it were, by the way and in a corner, somewhere among the ancient ceremonies of the Roman people, now the ceremonies which are retained seem to be retained as the setting of the great central feature of the Divine hallowing. The bride is still adorned as before in the long white robe, and with the seemly veil. Her crown of flowers is in the East made one of the most prominent features of the sacred benediction. The ring still typifies a constancy which is now less than ever to know of severance; the earnest of a fitting settlement are formally presented in the church as before in the house; the hands are solemnly joined, but now by the priest; the kiss itself is sometimes taken up into the *pax* of Christian custom, and made as it were a breath with the hallowing of the Lord. There is no intention to obscure the great fact of the mutual consent of the parties, which is indeed made at least as prominent in the Christian ceremonies as it was before in the non-Christian *sponsalia*; but above it rises the sense of the hallowing which goes forth in marriage to members of Christ's Body, and this seems to find its utterance in the words of blessing, and the uplifted hand of the Christian priest, who stands over the pair as they bow before him, and joins them together with the authority of GOD.

The benediction came to be regarded as the central feature.

It can be no matter of surprise if the common sentiment in many parts of Christendom has adopted the conclusion that the benediction of the Christian priest is an essential, and indeed the main essential, of a Christian marriage. Nor has this common sentiment been unsupported by serious theologians. In the East it has for centuries been the prevalent doctrine that the formal solemnization before the Church is not less necessary than the mutual consent of the parties.

Benediction sometimes regarded as essential.

In the East.

This is, for example, the teaching of the Orthodox Confession of the Patriarch Peter Mogilas, of Kiev (A.D. 1640),¹ which has been confirmed by various synods, and is admitted throughout the East to be of very high authority. This

The Confession of Peter Mogilas.

¹ “Ὁρθόδοξος ὁμολογία τῆς πίστεως τῆς καθολικῆς καὶ ἀποστολικῆς ἐκκλησίας τῆς ἀνατολικῆς,” in Kimmel, Monum. I.

Confession lays down that there are three essentials for Christian marriage:

- (1) Suitable matter (ὑλη ἀρμόδιος), i.e., a man and a woman whose marriage no impediment bars.
- (2) A duly ordained priest or bishop (ὁ ἱερεὺς, ὅπου νὰ εἶναι νομίμως κεχειροτονημένος ἢ ὁ ἐπίσκοπος).
- (3) The invocation of the Holy Ghost, and the solemnity of the formularies (ἡ ἐπίκλησις τοῦ ἁγίου πνεύματος καὶ τὸ εἶδος τῶν λογίων).

The teaching of the Confession appears to be generally received. It is not, however, denied by learned Eastern writers that the formal solemnization and the presence of the priest were not in early ages always required.

In the
West.

Melchior
Canus.

In the West the subject of the essential character of the priestly benediction acquired interest in the 16th century from the teaching of Melchior Canus. He maintained that the priest was the minister of the sacrament, and that while marriage not celebrated *in facie ecclesiæ* might be true and valid marriage, it could not be a sacrament. A fundamental error which appears to have lain at the root of the teaching of Melchior Canus was the conception that the sacrament was something distinct from and superadded to the natural marriage union, instead of the taking up of that union into a hallowed condition. Melchior Canus seems to have been the first writer in the West, except, perhaps, William of Paris, who maintained the essential character of the priestly benediction; but his teaching acquired importance from the influential character of the theologians who adopted it. Sylvius, Estius, Tournely, Juenin, Renaudot, are numbered among them.¹ It may be said that in the present day the views of Melchior Canus receive no support in Western Christendom. Pius IX., in an allocution dated 27 Sept., 1852, affirmed that there "can be no marriage among the faithful which is not at one and the same time a sacrament"; and in the Syllabus of the Encyclical *Quanta Cura*, put forth in 1864, the following proposition appears as *condemned*: "The sacrament of marriage is something accessory

Pius IX.

¹ Billuart, *De Matrimonio*, diss. i. a. 6.

to and separable from the contract, and the sacrament itself depends simply on the nuptial benediction."

The evidence as to the essential character of the benediction may now be reviewed.

Evidence
as to the
essential
character
of the
benediction

I. *Holy Scripture.*

There is no passage of Holy Scripture which refers to the priestly benediction, or to any religious formality in the solemnization of marriage among Christians.

II. *The Church in History.*

AUTHORITIES.

S. IGNATIUS.

Epistle to Polycarp, § 5.¹

Ἦρέπει δὲ τοῖς γαμοῦσι καὶ ταῖς γαμούσαις μετὰ γνώμης τοῦ ἐπισκόπου τὴν ἔνωσιν ποιῆσθαι, ἵνα ὁ γάμος ᾗ κατὰ Κύριον καὶ μὴ κατ' ἐπιθυμίαν· πάντα εἰς τιμὴν Θεοῦ γινέσθω.

S. CLEMENT OF ALEXANDRIA.

Pædagogus, lib. iii. c. 11.

Ἀλλοτρίων δὲ αἱ προθέσεις τριχῶν τέλεον ἔκβλητοι, ὁθνείας τε ἐπισκενάζεσθαι τῇ κεφαλῇ τὰς κόμας ἀθεώτατον, νεκροῖς ἐνδιδυσκοίσας πλοκάμοις τὸ κρανίον. τίνοι γὰρ ὁ πρεσβύτερος ἐπιτίθησι χεῖρα; τίνα δὲ εὐλογῇσει; οὐ τὴν γυναῖκα τὴν κεκοσμημένην, ἀλλὰ τὰς ἀλλοτρίας τρίχας, καὶ δι' αὐτῶν ἄλλην κεφαλὴν.

Stromata, iv. 20.²

Ἀγιάζεται γοῦν καὶ γάμος κατὰ λόγον τελειούμενος, ἂν ἡ συζυγία ἐποπίπτῃ τῇ Θεῷ καὶ διοικῇται μετὰ ἀληθινῆς καρδίας ἐν πληροφορίᾳ πίστεως.

PS.-CLEMENTINES.

Epistola Clementis ad Jacobum, § 7.³

Τὰ δὲ κατὰ τοὺς πρεσβυτέρους ἔστω τάδε. Πρὸ πάντων τοὺς νέους πρὸς γάμον ζευγνύτωσαν ἐν τάχει προλαμβάνοντες τῆς νεαζούσης ἐπιθυμίας τὰ παγιδεύματα.

TERTULLIAN.

De Monogamia, cap. 11.⁴

Ut igitur in Domino nubas secundum Legem et Apostolum (si tamen vel hoc curas), qualis es id matrimonium postulans, quod eis a quibus postulas, non licet habere; ab episcopo monogamo, a presby-

¹ Lightfoot's Ed. tom. ii. pp. 349, 350.

² Migne's Ed. tom. i. p. 1337.

³ Migne's Ed. S. Clement of Rome, tom. ii. p. 41. ⁴ *Ibid.* tom. ii. p. 943.

teris et diaconis ejusdem sacramenti, a viduis, quarum sectam in te recusasti? Et illi plane sic dabunt viros et uxores, quomodo buccellas. Hoc enim est apud illos: *Omni petenti te dabis*. Et conjungent vos in Ecclesia virgine, unius Christi unica sponsa.

Ad Uxorem, ii., c. 9.¹

Unde sufficiamus ad enarrandam felicitatem ejus matrimonii, quod ecclesia conciliat et confirmat oblatio [et obsignat benedictio (angeli renuntiant, Pater rato habet)], *or*

[et obsignatum angeli renuntiant, et Pater rato habet].

De Pudicitia, c. 4.²

Ideo penes nos occultae quoque conjunctiones, id est non prius apud Ecclesiam professae juxta mœchiam et fornicationem judicari periclitantur. Nec inde consertae obtentu matrimonii crimen eludant.

S. SIRICIUS.

Epistle to Himerius, c. 4.³

de conjugali autem velatione requisisti, si desponsatam alii puellam, alter in matrimonium possit accipere. Hoc ne fiat modis omnibus inhibemus; quia illa benedictio, quam nupturae sacerdos imponit, apud fideles cujusdam sacrilegii instar est, si ulla transgressione violetur.

Epistola decretalis Syricii Papae ad Eumerium Tarraconensem Episcopum, c. 9.⁴

Quicumque itaque se ecclesiae vovit obsequiis, a sua infantia ante pubertatis annos baptizari et lectorum debet ministerio sociari, qui ab accessu adolescentiae usque ad tricesimum aetatis annum, si probabiliter vixerit, una tantum et ea, quam virginem communi per sacerdotem benedictione percepit uxore contentus, acolythus vel subdiaconus esse debet.⁵

S. TIMOTHY OF ALEXANDRIA.

Question 11.⁶

Εἰς τὸ ζεύξαι γάμον ἐὰν καλέσῃ τις κληρικὸν, ἀκούσῃ δὲ τὸν γάμον παράνομον, ἢ θειογαμίαν, ἢ γοῦν ἀδελφὴν τελευτησάσης γυναικὸς τὴν μέλλουσαν ζεύγνυσθαι, εἰ ὀφείλει ἀκολουθῆσαι ὁ κληρικὸς, ἢ προσφορὰν ποιῆσαι;

¹ Migne's Ed. tom. i. p. 1302.

² *Ibid.* tom. ii. p. 987.

³ *Ibid. Pat. Lat.* tom. xiii. p. 1136.

⁴ Hinschius, *Decretales Pseudo-Isidorianae*, p. 522.

⁵ "De Siricii epistolis tribus ex Hispana desumptis . . . controversio nulla est." (Hinschius, *Prolegomena*, p. xviii.)

Migne, *Pat. Grae.* tom. xxxiii. p. 1304.

S. AMBROSE.

Epist. 19, § 7.¹

Sed prope nihil gravius quam copulari alienigenae, ubi et libidinis, et discordiae incentiva, et sacrilegii flagitia conflantur. Nam cum ipsum conjugium velamine sacerdotali, et benedictione sanctificari oporteat; quomodo potest conjugium dici, ubi non est fidei concordia.

S. BASIL.

*Homily VII. on the Hexaemeron.*²

οἱ ἄνδρες ἀγαπάτε τὰς γυναῖκας, καθὼν ὑπερόριοι ἀλλήλοις πρὸς κοινωνίαν γάμου συνέλθητε· ὁ τῆς φύσεως δεσμός, ὁ διὰ τῆς εὐλογίας ζυγὸς, ἔνωσις ἔστω τῶν διεστώτων.

Epistle 217. *Canon* 69.³

Ἀναγνώστης, εἰ τῇ ἑαυτοῦ μνηστῇ πρὸ τοῦ γάμου συναλλάξειεν, ἐνικαντὸν ἀργήσας, εἰς τὸ ἀναγινώσκειν δεχθήσεται, μείων ἀπρόκοπος. Κλεψιγαμήσας δὲ ἄνευ μνηστείας, πανθήσεται τῆς ὑπηρεσίας. τὸ αὐτὸ καὶ ὑπηρέτης.

SYNESIUS.

Epist. 105.⁴

Ἐμοὶ τοιγαροῦν ὁ τε Θεὸς, ὁ τε νόμος, ἡ τε ἱερὰ Θεοφίλου χεὶρ, γυναῖκα ἐπιδέδωκε. Προαγορεύω τοίνυν ἅπασι, καὶ μαρτύρομαι, ὡς ἐγὼ ταύτης οὔτε ἀλλοτριώσομαι καθάπαξ, οὔτε ὡς μοιχὸς αὐτῇ λάθρα συνέσομαι. Τὸ μὲν γὰρ ἡκιστα εὖσεβές· τὸ δε ἡκιστα νόμιμον. Ἀλλὰ βουλήσομαί τε καὶ εὖξομαι σὺχνά μοι πάνυ καὶ χρηστὰ γενέσθαι παιδιά.

S. INNOCENT I.

*Epistle to Victricius of Rouen.*⁵

cum benedictio quae per sacerdotem super nubentes imponitur, non materiam delinquendi dedisse, sed formam tenuisse legis a Deo antiquitus institutae doceatur.

STATUTA ECCLESIAE ANTIQUAE.

Canon 101.⁶

Sponsus et sponsa, cum benedicendi sunt a sacerdote, a parentibus suis vel a paranympis offerantur. Qui cum benedictionem acceperint, eadem nocte pro reverentia ipsius benedictionis in virginitate permaneant.

¹ Migne's Ed. tom. ii. p. 984.² *Ibid.* tom. i. p. 160.³ *Ibid.* tom. iv. pp. 800, 801.⁴ *Ibid.* Pat. Graec. tom. lxvi. p. 1485.⁵ *Ibid.* Pat. Lat. tom. xx. p. 475.⁶ *Ibid.* S. Leo, tom. iii. p. 889.

Eclogue of Leo the Isaurian and Constantine (740 A.D.) (Quoted by Zhishman, p. 158.)

Εἰ δὲ κατὰ στένωσιν ἢ διὰ ταπείνωσιν μὴ δυννηθῇ τις εὐπρολήπτως καὶ ἐγγράφως ποιῆσαι γάμον, καὶ ἀγράφως συνίσταται γάμος ἀδόλως συναινέσει τῶν συναλλασσόντων προσώπων καὶ τῶν τούτων γονέων, εἴτε ἐν ἐκκλησίᾳ τοῦτο δι' εὐλογίας ἢ καὶ ἐπὶ φίλων γνωρισθῇ.

Capitularies of the Frankish Kings. (Quoted by Van Espen.)¹

Legitur quoque in Capitularibus Regum Francorum, lib. 7, cap. 179 :

“Prius conveniendus est Sacerdos in cujus Parochia nuptiae fieri debent in Ecclesia coram populo. Et ibi inquirere una cum populo ipse Sacerdos debet, si ejus propinqua sit an non, aut alterius uxor, vel sponsa, vel adultera. Et si licita et honesta omnia pariter invenerit, tunc per consilium et benedictionem Sacerdotis et consultu aliorum bonorum hominum eam sponsare et legitime dotare debet.”

*Capitulary of Charlemagne (802 A.D.).*²

Conjunctiones facere non praesumat, antequam episcopi, presbyteri cum senioribus populi consanguinitatem conjungentium diligenter exquirant, et tunc cum benedictione jungantur.

S. Ignatius. S. Ignatius (Bp. of Antioch, c. A.D. 70–107) in his Epistle to Polycarp³ says that it behoves men and women who marry to effect their union with the sanction (μετὰ γνώμης) of the bishop, in order that the marriage may be according to the Lord, and not according to appetite. The bearing of the passage on the question before us depends upon the meaning of the word γνώμη. It may mean mere approval; but from other passages of S. Ignatius⁴ it seems possible that it means more, as sanction or benediction. If so, the Christian benediction at a marriage ceremony dates back to the close of the first century of the Christian era.

S. Clement of Alexandria. In the time of S. Clement of Alexandria (at the Catechetical School from A.D. 190 to A.D. 203) the custom of priestly benediction by the imposition of hands was established. In

¹ Van Espen, *De Spons. et Matrim.* tit. xii. cap. 5.

² *Monumenta Germaniae Historica. Legum*, tom. i. p. 95.

³ S. Ignatius, *Epistle to Polycarp*, § 5.

⁴ *Ibid. Eph.* 3 or 4. *Smyrn.* 6, *Polyc.* c. i. v. 8.

the *Pædagogus* he says, referring to marriage, "For on whom does the priest lay his hand? whom will he bless?"¹ A passage in the *Stromata* may or may not refer to the benediction. "(A wife and) marriage properly solemnized (κατὰ λόγον τελειούμενος) are hallowed, if the union be subjected to God, and the life followed with a true heart in fulness of faith."²

In the Clementines (A.D. 200 ?) this passage occurs: "But The
Clemen-
tines. concerning the presbyters let these things be ordered. Before all let them be prompt in uniting the young men in marriage, anticipating the snares of youthful lust."³

Tertullian in his Montanist treatise *De Monogamia* (c. A.D. 217) Tertullian. implies that marriage was ordinarily sought from the bishop and clergy, though he couples the widows (presumably the official and consecrated widows) with them.

"In order that thou mayest thus marry in the Lord according to the law and the Apostle (if indeed thou hast any care for this), what sort of a person art thou who demandest that which is not lawful to those from whom thou demandest it; a bishop, the husband of one wife, presbyters and deacons of the like obligation, widows whose mode of life thou hast in thine own person rejected? And they of course will supply husbands and wives just like rolls of bread. For this is the rule with them: 'Thou shalt give to every man that asketh thee.' And they will conjoin you in the virgin Church, the sole spouse of the one Christ."⁴

The passage is probably not strained if we imply that the clergy had to do both with the preliminaries and with the solemnization of marriage.

In the *Ad Uxorem* (c. A.D. 197) he writes: "Whence shall we be able to describe the happiness of that marriage which the Church joins together (*conciliat*, ? brings about), and the oblation confirms, and the benediction seals?" Another reading for the last phrase has, "angels declare to be sealed, and the Father holds as ratified."⁵ The part of the Church in the solemnization appears to be here undeniable.

¹ S. Clement of Alexandria, *Pædagogus*, lib. iii. c. 11.

² *Ibid.* *Stromata*, iv. 20. Some read γυνή, others γούν.

³ *Epistola Clementis ad Jacobum*, § 7.

⁴ Tertullian, *De Monogamia*, c. 11.

⁵ *Ibid.* *Ad Uxorem*, lib. ii. c. 9.

A passage in the *De Pudicitia* (c. A.D. 217) shews how strong in Tertullian's day was the feeling that a Christian ought to be married with religious rites. "Accordingly among us clandestine marriages also, that is to say, those not first professed before the Church, run the risk of being accounted adultery and fornication. Nor do such unions escape the charge on this ground, that they were contracted under colour of matrimony."¹

S. Siricius. S. Siricius (bp. 385-398), writing to Himerius, who had enquired whether a man might marry a maiden who had been betrothed to another, replies peremptorily in the negative; "because if that benediction, which the priest bestows upon the woman about to marry, be violated by any breach, such violation is held among the faithful as a kind of sacrilege."² It is remarkable that the benediction alluded to is the benediction given at the espousal or betrothal; but when once a woman has been thus espoused with the benediction of the Church to one man, Siricius indicates as sacrilegious any subsequent union with another man.

Another passage of the same Siricius requires that a subordinate minister of the Church shall be one who has had only one wife, "whom he has received as a virgin with the usual benediction by the priest."³

S. Timothy of Alexandria In the 11th of the Questions recorded by S. Timothy of Alexandria (patriarch A.D. 381) it is asked: "If any call a clerk to join a marriage, and he hear that the marriage is contrary to law, or sacrilegious (incestuous), as in the case of a man about to marry his deceased wife's sister, whether the clerk ought to follow, or to make the offering."⁴

S. Ambrose S. Ambrose, attacking marriages between Christians and unbelievers, says: "For when marriage itself must be sanctified by the priestly veiling and by the benediction, how can that be called marriage where there is no agreement of faith?"⁵

¹ Tertullian, *De Pudicitia*, c. 4.

² S. Siricius, *Epist. to Himerius*. Migne, *Patrolog. Lat.* tom. xiii. p. 1136.

³ *Epistola decretalis Syricii Papae ad Eumerium Tarraconensem Episcopum*, c. 9. (In Hinschius, *Decretales Pseudo-Isidorianae*, p. 522.)

⁴ S. Timothy of Alexandria, 9, 11. See Migne, *Pat. Graec.* tom. xxxiii. p. 1304.

⁵ S. Ambrose, *Epist.* 19, §7.

S. Basil, in his Homilies on the Hexaemeron, speaks of S. Basil. marriage as the "bond of nature" and "the yoke by the blessing" (ὁ διὰ τῆς εὐλογίας ζυγός).¹ In canon 69 he rules that a reader who has married clandestinely without a betrothal shall cease from his ministry. Such marriages would presumably be without the blessing of the Church.²

Synesius, bishop of Ptolemais in the 5th century, says that Synesius. "God, the law, and the holy hand of Theophilus bestowed my wife upon me."³ Theophilus was the patriarch of Alexandria.

S. Innocent I. (bp. 402–417 A.D.), in his letter to Victricius S. Innocent I. of Rouen, says that "it is taught that the benediction which is imposed by the priest upon those who are marrying has maintained the form of the law instituted of old by God."⁴

In the *Statuta Ecclesiæ Antiquæ*, published by Quesnel, there The Statuta Ecclesiæ Antiquæ. occurs a canon (No. 101) which lays down that the bride and bridegroom, when they are about to be blessed by the priest (*cum benedicendi sunt a sacerdote*), are to be presented by their parents or paranymphs, and goes on to emphasize the reverence which is due to the benediction when it has been received (*Qui cum benedictionem acceperint, eadem nocte pro reverentia ipsius benedictionis in virginitate permaneant*).⁵ The canon is referred to the African Church at the close of the fourth century.

The passages hitherto quoted are abundant evidence that the The benediction an ordinary accompaniment of Christian marriage. benediction of the priest was an ordinary accompaniment of Christian marriage. It was not, however, for many centuries required by either the ecclesiastical or the secular law as a condition of valid marriage. By a constitution of Theodosius and Valentinian in A.D. 439, the mere consent of the parties was recognised as sufficient for the constitution of a marriage.⁶ The 22nd Novel of Justinian makes the same recognition.⁷ The first indication of a tendency on the part of the secular Theodosius and Valentinian

¹ S. Basil, *Homily vii. on the Hexaemeron*.

² *Ibid.* *Epist.* 217, *Can.* 69.

³ Synesius, *Epist.* 105.

⁴ S. Innocent I., *Epistle to Victricius* (Migne, *Patrolog. Lat.* tom. xx. p. 475).

⁵ Migne's Edition of S. Leo, tom. iii. p. 889.

⁶ *Nov. Theodosii*, ii. tit. xii.: "Consensu licita matrimonia posse contrahi."

⁷ Quoted by Zhishman, p. 140: "γάμον μὲν οὖν διάθεσις ἀμοιβαία ποιεῖ, τῆς τῶν προικῶν γε οὐκ ἐπιδεομένη προσθήκης."

Justinian. law to adopt and ratify the Church form of solemnization appears to be found in the 74th Novel of Justinian (A.D. 537), which enacts :

(1) That persons of noble standing, down to Senators and Illustres, are not to conclude marriage without the execution of proper instruments in writing with regard to (a) the *dos*, and (b) the *donatio propter nuptias*.

(2) That persons of gentle standing are at least to make known their marriage in a church and before its legal officer (*ἐκδικῶ*—not the bishop, but the registrar or notary public of the church, whose business it was to summon three or four of the clergy as witnesses that on such a date the specified parties were united in the church).

(3) That the common people generally may continue to contract valid marriages without any external solemnity.¹

**The
Eclogue.**

During the following centuries the practice of solemnizing betrothals and marriages in the Church, with the use of the Euchology, no doubt tended to become universal; but it does not appear to be required even in the Eclogue of Leo the Isaurian and Constantine (740 A.D.), for marriage is recognised by the Eclogue, whether it be by written instruments or by the verbal consent of the parties and of their parents, and whether it be solemnized in a church or merely with the cognisance of friends.²

**The Capi-
tularies
of the
Frankish
Kings.**

Passing to the Western Empire, we find in the *Capitularies of the Frankish Kings* a provision that after the priest has made proper enquiries a man may espouse and lawfully dower a woman by the advice and benediction of the priest, and with the consent of other good men.³

The Capitulary of Charlemagne (A.D. 802) rules that no one is to presume to make marriages before that the bishops, the priests, and the seniors of the people diligently enquire of the consanguinity of the parties seeking marriage, and that afterwards the parties are united with the benediction.⁴

¹ Zhishman, p. 141.

² *Eclog.* ii. 8, quoted by Zhishman, p. 158.

³ *Lib.* vii. c. 179, quoted by Van Espen, tit. xii. cap. 5.

⁴ *Monumenta Germanicæ Historica.* Legum, tom. i. p. 95.

Summing up the evidence of the first thousand years of Christianity, it may be said to be sufficiently clear :

**Summary
of evidence
of the first
thousand
years of
Christi-
anity.**

(1) That where a marriage had been celebrated by Christians with the usual civil forms, there being no bar which, by Christian rule, would hinder the marriage, it was accepted as valid, and no priestly benediction was required as a condition of validity.

(2) That, notwithstanding, from the earliest age of Christianity the priestly benediction was a usual accompaniment of marriage between Christians.

The practice of the past nine centuries is entirely in accordance with this evidence. It is unnecessary to follow it in detail, but it may be briefly stated that prior to the Council of Trent (A.D. 1545-1563) the priestly solemnization was not required by the Canon law as a condition of validity, and that where, as a result of the Council of Trent, this requirement is now made, it is commonly understood to be so made in obedience to the decree of the Council as a positive ecclesiastical regulation. At the present day in the Latin Church marriages which have been effected only by consent and the copula are still held valid on occasion in those countries where the decrees of the Council of Trent have never been published. The same has been always the case in Scotland. It was no less the case in England till the passing of Lord Hardwicke's Act in A.D. 1753.

**Practice
of the
past nine
centuries.**

Since, therefore, in the history of the Christian Church it has been usual, when occasion required, to admit marriages as valid which had not been solemnized with the priestly benediction, and since also there is no requirement of such benediction in Holy Scripture, we conclude that solemnization with the priestly benediction is not of the essence of Christian matrimony.

**Conclusion.
The bene-
diction not
essential.**

(3) *Is it essential that there should be a preliminary contract, whether with or without the priestly benediction ?*

The mutual consent of the parties is a feature of the marriage union which is admitted by the universal tradition of Christians to be altogether essential. Where there is in either party an absence of free consent to the union, there the union is

**Consent
universally
admitted
to be
essential.**

no marriage. In this particular the usage of the Christian Church did in truth only accept the usage of Rome. By the axiom of Ulpian it was consent, and consent alone, which constituted marriage (*nuptias non concubitus sed consensus facit*).¹ As will presently be seen, the Christian Church has not been able to follow the Roman law in its clearly-cut restriction of the essential character of marriage to the mutual consent of the parties; but the Church has never been found to sanction marriages in which the element of consent was lacking. There have indeed been times and countries in which the conventional tone has required that the consent of others besides the principals should be obtained; and the law is often found making similar requirements. Thus the law of Rome ordinarily required the consent of the persons in whose *potestas* the bride and bridegroom respectively were living; and the law of England requires that minors shall not be married against the will of their parents or guardians. In some codes more stress appears to be laid on the consent of the father than on that of the bride. In all such cases, however, it will be found that the regulations are in restraint of the sufficiency of the mutual consent of the parties, and never in supersession of such mutual consent. By particular laws parties may be required to be supplied with other qualifications besides their own mutual consent; but no qualification is ever to any purpose unless their mutual consent is present. It is the mutual consent of the parties themselves which is, without exception, treated as essential. Any other consent, however desirable, is only a particular requirement, which has no claim to the essential character.

The spirit of the Roman law in regarding mutual consent as the one efficient cause of marriage has been sufficiently illustrated in the foregoing section. That it might in no case be superseded is clear from a constitution of Diocletian and Maximin which rules that none can be compelled either to marry or to be reconciled after divorce.²

So complete was the Christian acceptance of the principle of

¹ Ulpian, in *Digest*, l. 17. 30.

² Code, lib. v. t. iv. l. 14.

the necessity of consent in marriage that there is no single instance known of the denial of it by any Christian writer. It accordingly called for no justification or assertion, and it is difficult to find any early Christian authorities bearing on the subject. Ulpian's maxim was occasionally recited,¹ and, doubtless after many centuries of established authority in the practice of the episcopal courts of Italy, it found a lasting place in the *Decretum* of Gratian. The various canons which deal with forcible abduction have some bearing on the subject. But on the whole it may be said that there is not much to refer to on the subject of consent before the time of Gratian and the embodiment of the canon law. That law may afford some illustrations, which, if late in point of time, are still on the whole but expanded statements of earlier practice.

One of the features of the later ecclesiastical law of marriage is the formal enumeration of the recognized impediments. Three of these impediments, viz., Error, Force and Fear, and Abduction (*Error, Vis et Metus, Raptus*) are based upon the principle that the free consent of the parties is indispensable.

Illustrated
by impe-
diments.

(i.) *Impediment of Error.*

(a) *Error as to person.* The most familiar instance of a mistake with regard to the person of the bride is the instance of Jacob's marriage with Leah. Leah was substituted for her sister Rachel by a mere trick of their father Laban; and Jacob, alike in any prior ceremony of marriage, and, as it would seem, in the subsequent copula, received Leah as being Rachel. There had not therefore been any consent on the part of Jacob to a marriage with Leah, and according to the principles of the canon law,² if Jacob had chosen to repudiate Leah on becoming aware of the fraud, he would have been at perfect liberty to do so. On the other hand, if he chose to continue the relationship, although it had been fraudulently commenced, his consent must

(i) Impedi-
ment of
Error.

(a) Error
as to
person.

¹ As in the *Opus Imperfectum in Mattheum*.

² *Decretum Gratiani*. C. 29, qu. 1, § 1. "Erravit, non ergo consentit; non itaque conjux est appellanda, quia non fuit ibi consensus utriusque, sine quo nullum matrimonium esse potest." For particular reference to the case of Jacob and Leah see *Ibid.* § 3, 4.

be understood to confer the character of marriage upon the union from the time of the accordance of such consent with subsequent (not antecedent) copula. The practice of polygamy in the time of Jacob suggested a different solution of the difficulty; he married Rachel, and did not dismiss Leah.

There is no evidence of any difference of view among Christians as to the impediment of error when, as in the case of Jacob and Leah, it affects the person. All Christendom alike in East and West held the necessity of consent for the effecting of a marriage, and an error as to person clearly vitiates such consent. So S. Thomas Aquinas concludes "that whatsoever hinders the cause in its own nature, hinders also the effect *civiliter*; but consent is the (efficient) cause of marriage, and therefore what excludes consent excludes marriage. Consent again is an act of the will, which pre-supposes an act of the intelligence; and if the first be lacking, it necessarily results that a defect occurs in the second: and so, when an error hinders cognition, there follows a defect in the consent itself, and consequently in the marriage; and thus error by the law of nature has this result, that it excludes marriage."¹

(b) Error
as to
condition,
fortune, or
character.

(b) *Error as regards (α) condition, (β) fortune, or (γ) character.* While it is generally admitted that a mistake as to the person of the man or woman invalidates a marriage, because it necessarily excludes consent, this kind of mistake, the error as to person, is the only error which can be admitted as invalidating a marriage in its essential character. Other errors may invalidate marriages, as the effect of the positive laws of states or churches, but no other error precludes the possibility of the Divine institution.

There are commonly enumerated, besides the error of person, three other descriptions of errors; viz., (α) error of condition, as when a free man marries a slave woman, believing her to be free; (β) error of fortune, as when a man marries a poor woman, believing her to be rich; (γ) error of quality (or personal character), as when a man marries an unchaste woman,

¹ S. Thomas Aquinas, in addit. ad iii. part. *Summæ Theologiæ*. Qu. 51, art. i.

believing her to be pure. In none of these cases is any error ordinarily made with regard to the person.

(*a*) *Error of condition.* Difference of condition, or the difference which exists when one party is free and the other a slave, was in early ages held to be an impediment to marriage; not because there was any bar here imposed by the Divine institution, but because of the grave difficulties and complications which would arise by admitting unions which came under the ban of the secular law, and which the Church was powerless to maintain in the face of the property rights of the slaveholder. Difference of condition is therefore an instance of a non-essential impediment imposed by the Church of a particular age for local and temporary reasons. It acted in restraint of the liberty of individuals to contract marriage by mutual consent with whomsoever they might choose.

A mistake made as to the condition of a wife or husband, as if a man married a slave woman believing her to be free, would therefore have the effect in the early centuries of involving a man in an union which, alike by the law of the Church and by that of the State, was regarded as null. Apart from the positive restrictions of the law there was no bar to such marriages, and by degrees the restrictions were removed. As the impediment of condition disappeared from Church legislation, so, of course, did any difficulty arising from error with regard to it. Such error is not therefore now a practical question; nor can it be said at any time to have affected the essential nature of marriage, with which alone this treatise has to do.

(*β*) *Error of fortune.* The practices of adventurers give rise to many cases of error of fortune. Thus a man, pretending to be of noble birth and large property, may succeed in marrying a lady of position and fortune. When the fraud is discovered, does the marriage stand? The reply of the Church has always been to the effect that the marriage must stand, unless indeed the error of fortune involve, in fact, an error of person as well. If the lady had accepted the person of the adventurer, and, in giving her consent, had had the conjugal intention with regard to that particular man, then accidental circumstances as to

property or position could in no way invalidate the union. Indeed, the very terms of the contract in many cases expressed the fact that the marriage union covered all such accidents; it was "for richer, for poorer," and the like.

(γ) *Error of quality, or personal character.* If a man marry a woman believing her to be honest, and find she is a professional thief; or marry a woman believing her to be sober, and find that she is a habitual drunkard, has such a mistake the effect of invalidating the marriage? The reply of Christian practice is to the effect that it does not. The mutual knowledge of the parties in any marriage is more or less imperfect; and even such misapprehensions as those mentioned cannot remove the conjugal consent of each to accept the person of the other.

One case of *error qualitatis* has given rise to considerable controversy. If a man marry a woman who is not a virgin, believing her to be a virgin, is he at liberty to put her away?

Those who hold with Dr. von Döllinger that the word *πορνεία* in the gospels has reference to pre-nuptial unchastity, understand our Lord to teach that in this case a man may put away his wife, or rather decline to receive her. Presumably they would say that the consent was never fully given, inasmuch as it would be withheld in the copula itself, which would become by such withholding, not the copula of marriage, but something short of it. It is certainly not the least of the arguments against Dr. von Döllinger's position that the right of putting away a woman under such circumstances has never been recognised in the Christian Church.

(ii.) *Impediment of Force and Fear (Vis et Metus).*

(ii) Impediment of force and fear.

The impediment of force, like that of error of person, at once invalidates a marriage, and on the same ground; viz., that the consent requisite for a true marriage is not forthcoming. By *force* is not meant abduction, which is commonly classed as a separate impediment, but such physical or moral constraint, exercised by parents or others, as leads a person to go through the form of marriage, and even pronounce the words of consent, when the free-will, which alone can give a true consent, is wanting.

(iii.) *Impediment of Abduction (Raptus).*

By *raptus* is not meant ravishment, but the forcible abduction of a woman to a place where she is no longer free, with a view to overbearing her to marriage. If by such forcible abduction the woman is actually driven against her will into the apparent acceptance of a marriage, the marriage falls for lack of consent, as in the case of any other compulsion under the prior head of Force and Fear, of which indeed, so far as affects the essential character of the impediment, abduction is but a particular case. (iii) Impediment of abduction.

The historical importance of abduction as a separate impediment is due to the many stringent regulations which punished this form of violence by pronouncing any marriage which followed it, with or without consent, to be absolutely null and void. These regulations were of the character of positive laws only, there being nothing in the nature of an abduction which renders the persons concerned in it incapable of a marriage, considered only from the point of view of the Divine law. The impediment of abduction in this aspect will therefore not concern us.

These three impediments of (1) Error (of person), (2) Force and Fear, and (3) Abduction, so far as it is a form of force overriding consent, are thus held to be impediments which not only bar the legal recognition of marriages which are vitiated by them, but which render such marriages, considered in themselves and from the standpoint of the Divine law, to be no marriages at all. In each case the ground is the same, that there is no consent or no free consent, and that free consent is essential to a true marriage. The recognition of these impediments by the canon law of the whole of Christendom for many centuries past may be regarded as convincing testimony of the acceptance of the principle that consent is necessary to marriage; there being at the same time no evidence at all of the maintenance of the contrary view. It should not indeed be overlooked that no formal enumeration of the various impediments to marriage is to be found before the middle ages, but the three impediments here noticed as in force Further evidence as to the necessity of consent not called for.

in no case contradict any rule or practice of the earlier Church, and are but the formal classification of generally recognised usage. Indeed the Roman law, in its assertion of the principle of the necessity of consent, had been simply accepted and followed by the Christian Church without contradiction or dispute.

What is covered by mutual consent.

(i) The Anglican Prayer Book.

The question now arises, When two persons agree together to be man and wife, how much must this consent be held to cover? Some modern forms of contract are much more explicit than others. Thus the forms of the present English marriage service, which are adapted from the Sarum *Ordo ad faciendum Sponsalia*, are remarkably full.¹ The parties are required to express their intention

(a) To take each other as husband and wife, "to live together after GOD's ordinance in the holy estate of matrimony."

(b) The man to "love her, comfort her, honour, and keep her in sickness and in health"; the woman to "obey him, and serve him, love, honour, and keep him in sickness and in health";

(c) "Forsaking all other" to "keep thee only unto her (him), so long as ye both shall live,"

(d) "To have and to hold from this day forward for better, for worse, for richer, for poorer, in sickness and in health, to love and to cherish (and to obey) till death us do part, according to GOD's holy ordinance."

Accordingly what the parties undertake is not merely such marriage as may happen to be sanctioned by particular legislation, but (a) "to live together *after* GOD's ordinance in the holy estate of matrimony." Such marriage is understood to involve (b) love, comfort, honour, and keeping in sickness and in health, and, in the case of the woman, obedience and service. (c) It

¹ The actual words of the betrothal in the Sarum *Ordo ad faciendum Sponsalia*, are as follows:

"I N. take the N. to my wedded wyf, to have and to holde fro this day forward, for better for wors, for richere for poorer, in sykenesse and in hele, tyll dethe us departe, if holy chyrche it woll ordeyne, and therto I plight the my trouthe.

"I N. take the N. to my wedded housbonder, to have and to holde fro this day forward, for better for wors, for richere for poorer, in sykenesse and in hele, to be bonere and buxum in bedde and at the borde, tyll dethe us departe, if holy chyrche it woll ordeyne, and therto I plight the my trouthe." (*The Sarum Missal in English*, p. 552.)

is exclusive, admitting of no second spouse during the lifetime of the first (d) It is indissoluble, save by death, all accidental circumstances of life being accepted as part of the contract.

These requirements are entirely justified (*a*) by Holy Scripture, (*β*) by Christian practice, (*γ*) by Reason.

(*a*) The requirement that the parties shall take one another as husband and wife, to live together after God's holy ordinance follows at once from the statement of our Lord that the ordinance is of Divine institution (see chapter I.). All that the Divine institution necessarily involves must be contained in the contract, or the Divine institution will be maimed and corrupted. Nor can anything beyond the Divine institution be required as part of the essential obligation. Particular requirements may be made by particular churches or states, but such requirements fall when allegiance is transferred from such particular churches or states to others which do not impose the requirements. The Divine institution remains entirely binding, whatever particular churches or states may see fit to add or to remove. The Divine institution of marriage, which is taught in Holy Scripture, is also maintained, as has been seen, alike by Christian practice, and by Reason (ch. I.).

(*b*) The recital of the duty of the man to love, comfort, honour, and keep his wife in sickness and in health, and of the duty of the woman to obey and serve the husband, to love, honour, and keep him in sickness and in health, while very full, considered as a form of expression of the contract, must be understood to be only a partial recital of the positive duties of Holy Matrimony. Marriage is essentially a mystery, and it is much easier to state what it excludes than what it contains. As with the great doctrinal mysteries, so with the mystery of marriage, the statements which have been formulated are chiefly negative in their character, excluding error rather than attempting to make any exhaustive statement of the truth. Thus Christian marriage is required to be with one partner only, excluding polygamy; and it is required to be undertaken *till death do part*, excluding divorce. But the deep realities of the interpenetration of being which marriage involves, do not readily lend themselves to the succinctness of expression which

a. "After
God's
ordinance."

b. "To love,
comfort,
honour, and
keep her."

is possible in a prohibition. All the fulness of mysterious union which GOD's holy ordinance contains must be understood to be contained in the undertaking to live according to GOD's holy ordinance. The particular duties specified in the English formula doubtless constitute important positive features of GOD's holy ordinance, as constantly recognised in Holy Scripture, and in the practice of the Church. They appear to call for no justification in detail.

c. To "forsake all others."

(c) The requirement to "forsake all others," and "keep only" to the husband or wife, will be referred to its authorities in the chapter on Polygamy.

d "Till death us do part."

(d) The requirement to live together "till death us do part" will also be referred to its authorities in the chapter on Divorce. The results of the investigations contained in those chapters may be here anticipated in the brief statement that the Divine institution of marriage, as restored in the Christian Church, admits neither Polygamy nor such Divorce as concedes re-marriage.

It follows, from the principles here asserted, that the requirements thus expressed in the English marriage service are to be understood in all cases of Christian marriage as necessarily contained in that Divine institution of marriage, which alone Christian men and women are at liberty to adopt. But although these requirements are to be understood in all cases of Christian marriage, they are not always, and indeed not commonly, expressed in the actual forms of marriage contract.

(ii) The Roman Ritual.

Thus in the Roman Ritual the only expressions of consent are these following:¹—

"N. Wilt thou accept N. here present to thy lawful wife according to the rite of Holy Mother Church?

"R. I will.

"N. Wilt thou accept N. here present to thy lawful husband according to the rite of Holy Mother Church?

"R. I will."

¹ *Rituale Romanum*, in Schneider, *Manuale Sacerdotum*, Coloniae, 1877, p. 639. In the Rev. C. W. Wood's *Marriage* (Manchester 1887) which gives the ritual presumably as used in England (p. 288), the consent as above is followed by the words of betrothal: "I, N., take thee, N., to be my wedded wife, to have and to hold, from this day forward, for better, for worse, for richer, for poorer, in sickness and in health, till death us do part, if Holy Church will it permit; and thereto I plight thee my troth." This appears to be a close adaptation of the Sarum *Ordo ad faciendum sponsalia*.

Upon these statements of consent the priest at once joins the hands of the parties, and pronounces "I unite you in marriage. In the name of the Father, and of the Son, and of the Holy Ghost. Amen." Thus in the Roman Ritual nothing is specified with regard to the matter of the contract beyond the general statement that each accepts the other as wife or husband according to the rite of Holy Mother Church.

In the Eastern Churches, which employ the Constantinopolitan rite, the expression of consent is not made by the parties themselves at all, but by the priest on their behalf, the parties by their presence and acquiescence being understood to consent. The formula employed at the betrothal for each of the parties is as follows:

(iii) The
Eastern
Euchol-
ogion.

"The servant of God N. is espoused to the servant of God N. in the name of the Father, and of the Son, and of the Holy Ghost. Amen."¹

Similarly at the final marriage ceremony or coronation:

"The servant of God N. is crowned to the servant of God N. In the name of the Father, and of the Son, and of the Holy Ghost. Amen."²

Thus the forms in most common use alike in East and West do not specify any particular obligations of the marriage bond. Such particular obligations are left to be gathered from other sources. The tradition has evidently been maintained that all which is required in the form of marriage is some expression of consent. It need not necessarily be expressed in writing; it need not necessarily be expressed orally by the parties; it is sufficient if by some unmistakeable sign, as by their presence at and acquiescence in a form of marriage pronounced by the priest, they make it clear that they accept the status of marriage. This is, in fact, as we have already noticed, the teaching of the Western Canon Law where

¹ *Euchologion* (quoted in Zhisman, p. 692): "Ἀρραβωνίζεται ὁ δοῦλος τοῦ Θεοῦ (ὁ δεῖνα) τὴν δούλην τοῦ Θεοῦ (τὴν δεῖνα) εἰς τὸ ὄνομα τοῦ Πατρὸς, καὶ τοῦ Υἱοῦ, καὶ τοῦ ἁγίου Πνεύματος. Ἀμήν."

² *Euchologion* (*Ib.*): "Στέφεται ὁ δοῦλος τοῦ Θεοῦ (ὁ δεῖνα) τὴν δούλην τοῦ Θεοῦ (τὴν δεῖνα), εἰς τὸ ὄνομα τοῦ Πατρὸς, καὶ τοῦ Υἱοῦ, καὶ τοῦ ἁγίου Πνεύματος. Ἀμήν."

unaffected by the Tridentine restrictions. It is the teaching of the English law prior to the passing of Lord Hardwicke's Act. It is the teaching of the Scotch law at the present day. This section may be concluded with a quotation to the same effect from Van Espen, the great Flemish canonist :

Van Espen "What Eugenius IV. says, in his *Decretum pro Armenis* cited
on consent. above, viz., that 'the efficient cause of matrimony is ordinarily mutual consent expressed by words of present application,' is in no wise to be so understood as if there could at any time be any other efficient cause of matrimony except mutual consent, but (the meaning is) that this consent is not always to be expressed by words; and so the word *ordinarily* has reference, not to the mutual consent, but to the expression of the consent 'by words of present application.'

"For as in other contracts consent may be expressed and manifested, not by words only, but also by signs and nods (*signis et nutibus*), similarly also in the matrimonial contract, as is said in Cap. 23 *De Sponsalibus*, where the pontiff replies that a deaf mute can contract marriage, 'Cum quod verbis non potest, signis valeat declarare.'"¹

(4) *Is the copula carnalis merely an ordinary accompaniment of the marriage state, or is there no marriage state without it?*

Consider-
able
difference
of opinion.

There is considerable difference of opinion as to whether the copula is of the essence of Christian marriage or not. Theologians of the Roman obedience for the most part decide in their books of theory that the copula is not essential; but in all practical cases there is an equal consensus that where the copula has not supervened, nullity of marriage may be declared by proper authority. Thus any case of *matrimonium ratum non consummatum* may be declared null on occasion, and the irremediable impotence of either party is invariably sufficient for a declaration of nullity. In practice therefore the copula is held to be essential. In the East it is also common to teach that the copula is not essential, while impotence is recognised as full justification for terminating a marriage union. Such termination is in the Eastern system spoken of as divorce rather than as annulment; but the provision that the incapacity must have been continuous from the time of the solemnization

¹ Van Espen, tit. xii.

shews that the termination is recognised as essentially an annulment, though formally a divorce. In England for the same cause marriages are pronounced null.

Difficult as the question is, it is a question the answer to which is of the utmost importance to the right understanding of the Divine laws of marriage, and it is a question which demands a definite answer one way or the other. Either the copula is not essential to the marriage union, or it is. Either, notwithstanding the fact that the cases are rare where it does not find place, the copula is yet but an accident of marriage, or else there is no such thing as a marriage without it.

The question important, though difficult.

(i.) *Holy Scripture.*

Holy Scripture appears to recognize the copula as the peculiar characteristic feature of marriage. In a former chapter (ch. III.) various passages were cited which went to prove that the copula was part of the original institution in a state of innocence.

(i.) *Holy Scripture.*

Gen. ii. 23, 24:

23 And Adam said, This *is* now bone of my bones, and flesh of my flesh : she shall be called Woman, because she was taken out of Man.

24 Therefore shall a man leave his father and his mother, and shall cleave unto his wife : and they shall be one flesh.

Here in connection with the method of woman's formation it is stated that henceforth husband and wife are to be "one flesh."

In the parallel passages, S. Matthew xix. 4-6, S. Mark x. 6-9, our Lord appears to assign the copula to the Divine institution.

S. Matthew xix. 4-6:

4 And he answered and said unto them, Have ye not read, that he which made *them* at the beginning made them male and female,

5 And said, For this cause shall a man leave father and mother, and shall cleave to his wife : and they twain shall be one flesh ?

6 Wherefore they are no more twain, but one flesh. What therefore God hath joined together, let not man put asunder.

S. Mark x. 6-9:

6 But from the beginning of the creation God made them male and female.

7 For this cause shall a man leave his father and mother, and cleave to his wife ;

8 And they twain shall be one flesh : so then they are no more twain, but one flesh.

9 What therefore God hath joined together, let not man put asunder.

These passages are very significant, not merely as regards the character of marriage in the state of innocence, but no less so as regards the character of Christian marriage. If the copula was an essential feature of the original Divine institution, it must be no less so of Christian marriage, which is no new institution, but the original marriage of Eden taken up into a new hallowing. All that was essential in Eden must be essential now. And it is difficult to see how words could state much more plainly the essential character of the copula than is in fact done by the words of our Lord. GOD, He says, "at the beginning made them male and female." "For this cause," that is to say, because of this Divine ordering, "shall a man leave father and mother, and shall cleave to his wife: and they twain shall be one flesh. Wherefore they are no more twain, but one flesh." Here is the prominent consequence, the great characteristic feature which results from the Divine ordering. It is at this point that the solemn prohibition comes in that man is not to meddle with the work of GOD. "What therefore GOD hath joined together, let not man put asunder." It is in one flesh that GOD hath joined them together; it is that one flesh that man may not put asunder. Is there not here a clear expression of the essential character of the copula?

S. Paul repeats the teaching of our Lord in his Epistle to the Ephesians.

Eph. v. 28-31:

28 Οὕτως ὀφείλουσιν οἱ ἄνδρες ἀγαπᾶν τὰς ἑαυτῶν γυναῖκας, ὡς τὰ ἑαυτῶν σώματα. ὁ ἀγαπῶν τὴν ἑαυτοῦ γυναῖκα ἑαυτὸν ἀγαπᾷ·

28 So ought men to love their wives as their own bodies. He that loveth his wife loveth himself.

29 Οὐδεὶς γάρ ποτε τὴν ἑαυτοῦ σάρκα ἐμίσησεν, ἀλλ' ἐκτρέφει καὶ θάλπει αὐτήν, καθὼς καὶ ὁ Κύριος τὴν ἐκκλησίαν·

29 For no man ever yet hated his own flesh; but nourisheth and cherisheth it, even as the Lord the church:

30 Ὅτι μέλη ἐσμὲν τοῦ σώματος αὐτοῦ, ἐκ τῆς σαρκὸς αὐτοῦ, καὶ ἐκ τῶν ὀστέων αὐτοῦ.

30 For we are members of his body, of his flesh, and of his bones,

31 Ἀπὸ τούτου καταλείψει ἄνθρωπος τὸν πατέρα αὐτοῦ καὶ τὴν μητέρα, καὶ προσκολληθήσεται πρὸς τὴν γυναῖκα αὐτοῦ, καὶ ἕσονται οἱ δύο εἰς σάρκα μίαν·

31 For this cause shall a man leave his father and mother, and shall be joined unto his wife, and they two shall be one flesh.

In the first Epistle to the Corinthians he expounds the phrase “one flesh” as being equivalent to the copula.

1 *Corinthians* vi. 15, 16.

15 Οὐκ οἴδατε ὅτι τὰ σώματα ὑμῶν μέλη Χριστοῦ ἐστίν; ἅρας οὖν τὰ μέλη τοῦ Χριστοῦ, ποιήσω πόρνης μέλη; μὴ γένοιτο.

15 Know ye not that your bodies are the members of Christ? shall I then take the members of Christ, and make *them* the members of an harlot? God forbid.

16 Ἡ οὐκ οἴδατε ὅτι ὁ κολλώμενος τῇ πόρνῃ ἐν σῶμά ἐστιν; “Ἔσονται γάρ,” φησὶν, “οἱ δύο εἰς σάρκα μίαν”

16 What? know ye not that he which is joined to an harlot is one body? for two, saith he, shall be one flesh.

When the writer of the Epistle to the Hebrews says that “marriage is honourable in all, and the bed undefiled,” he employs a form of parallelism frequent in Holy Scripture, in which the second statement repeats the first, while throwing stress upon some characteristic feature. The “bed undefiled” is the great characteristic of marriage, in connection with which it is necessary to affirm that marriage is honourable.

Hebrews xiii. 4:

4 Τίμιος ὁ γάμος ἐν πᾶσι καὶ ἡ κοίτη ἀμίαντος.

4 Marriage is honourable in all, and the bed undefiled.

On the whole it seems fair to sum up that Holy Scripture strongly countenances the view that the copula is essential to the Divine institution of marriage. There is no passage of Holy Scripture which can be fairly construed to imply that there can be marriage without the copula, unless it be the mention of the Blessed Theotokos as the wife of S. Joseph, a subject which will be presently considered.

(ii.) *The Church in History.*

The early ages of Christianity do not shew this question very definitely formulated, either for the purposes of doctrinal teaching, or for that of the practice of the episcopal tribunals. Certain passages of the Christian writers bear upon it; and it may be worth while here briefly to pass in review what may be gathered from the writers of the first five centuries.

(ii.) The Church in History.

A. *The First Five Centuries.*A. The
First Five
Centuries.AUTHORITIES IN THE FIRST FIVE CENTURIES ON THE ESSENTIAL
CHARACTER OF THE COPULA.

S. CLEMENT OF ALEXANDRIA.

Stromata, lib. ii. cap. 23.¹Γάμος μὲν οὖν ἐστὶ σύνοδος ἀνδρὸς καὶ γυναικὸς ἡ πρώτη κατὰ νόμον,
ἐπὶ γνησίων τέκνων σπορά.*Paedagogus*, lib. ii. c. 10.Συνουσίας δὲ τὸν καιρὸν μόνοις τοῖς γεγαμηκόσιν ἀπολέλειπται
σκοπεῖν· τοῖς δὲ γεγαμηκόσι σκοπὸς ἡ παιδοποιία· τέλος δὲ ἡ εὐτεκνία.

THE APOSTOLICAL CONSTITUTIONS.

Lib. 6, c. 28.

Οὐκοῦν ὁ γάμος τίμιος καὶ σεμνὸς, καὶ ἡ τῶν παίδων γένεσις, καθαρά.
οὐδὲν γὰρ κακὸν ἐν καλῷ ὑπάρχει.

S. AMBROSE.

De Institutione Virginis, lib. i. c. 6.²Cum enim initiatur conjugium tunc conjugii nomen adsciscitur;
non enim defloratio virginitatis facit conjugium, sed pactio conjugal.
Denique cum jungitur puella, conjugium est, non cum virili
admixture cognoscitur.Lib. i. cap. 7.³Dicit enim ad matrem: *Mulier, ecce filius tuus*. Dicit et ad
discipulum: *Ecce, mater tua*. Ipse est discipulus, cui mater
commendatur. Quomodo marito uxorem tolleret, si fuerat Maria
mixta conjugio, aut usum tori conjugalis agnoverat?*Epistola 60 ad Paternum*.⁴Si quis desponsata sibi et tradita utatur, conjugium vocat: qui
alienae expugnat pudorem, adulterium facit.

S. CHRYSOSTOM.

Homilia V. in Matthaeum.⁵Εἰ γὰρ ἔγνω αὐτὴν, καὶ ἐν τάξει γυναικὸς εἶχε, πῶς ὡς ἀπροστάτευτον
αὐτὴν καὶ οὐδένα ἔχουσιν τῷ μαθητῇ παρατίθεται, καὶ κελεύει αὐτῷ
εἰς τὰ ἴδια αὐτὴν λαβεῖν;

S. JEROME.

Commentary on S. Matthew i. 17.⁶*Virum Mariae, de qua natus est Jesus, qui vocatur Christus*. Cum
virum audieris, suspicio tibi non subeat nuptiarum; sed recordare con-
suetudinis Scripturarum, quod sponsi viri, et sponsae vocentur uxores.¹ Migne's Ed. p. 1085. ² *Ibid.* tom. ii. p. 316. ³ *Ibid.* tom. ii. p. 318.⁴ *Ibid.* p. 1183. ⁵ Field's Ed. vol. i. p. 65. ⁶ Migne's Ed. tom. vii. p. 23.

The extracts given above appear to shew that on the whole the Church of the first five centuries regarded the copula as a necessary feature of marriage. S. Clement of Alexandria S. Clement of Alexandria. regards marriage as “a cohabitation of husband and wife for the procreation of lawful children,” and he says that to the married the *σκοπὸς* is the procreation of children, while the *τέλος* is to have excellent children. Apparently the *σκοπὸς* is the purpose essentially contained in the institution of marriage, while the *τέλος* is the high special aim of the individual parent.

The Apostolical Constitutions teach that “marriage is honourable and chaste (*σεμνὸς*), and the begetting of children pure; for nothing evil subsists (*ὑπάρχει*) in the excellent.” The Apostolical Constitutions. The copula then subsists in marriage, or is part and parcel of it.

S. Ambrose, in a much-quoted passage of the *De Institutione Virginis*, says that “not the deflowering of a virgin, but the conjugal pact makes a marriage,” and that a wife is recognised as such from the time of the formal joining together. In the very next chapter of the same treatise, however, he uses the remarkable argument, also used by S. Chrysostom, that if the Blessed Mother had been really S. Joseph’s wife, our Lord would not have taken her away from him at the crucifixion to commit her to S. John. “How could He have taken the wife from the husband, if Mary had been united in marriage (*mixta conjugio*), or had known the *usus* of the marriage bed?” It is clear therefore that if to S. Ambrose there could be no marriage without the conjugal pact, it was equally impossible to recognise the full marriage character where the copula had not found place. Consent and the copula are both essentials. So in the Epistle to Paternus (Ep. 60) he says that where the copula follows espousal and the formal delivery of the bride, marriage is effected. S. Ambrose.

It has been mentioned that S. Chrysostom employs the same argument as S. Ambrose to shew that the Blessed Virgin was not fully S. Joseph’s wife. “For if he (S. Joseph) had known her, and had possessed her in the condition (*τάξει*) of a wife, how does (our Lord) commit her to the disciple as unprotected and having no one, and command him to take her into his own S. Chrysostom.

charge?" In S. Chrysostom's view therefore where the copula has not found place the woman is not ἐν τάξει γυναικὸς, that is to say, in the position, condition, or office of a wife.

S. Chrysostom is very commonly quoted as using the expression, *matrimonium non facit coitus, sed voluntas*, but the words occur in the *Opus Imperfectum in Matthæum*, which is not S. Chrysostom's.

S. Jerome. S. Jerome says that the Blessed Virgin and S. Joseph were related to each other not as husband and wife but as betrothed persons. "When thou hearest of a *husband*, let no suspicion of the nuptial union occur to thee; but remember the custom of the Scriptures, by which men betrothed are termed husbands, and women betrothed are termed wives."

S. Augustine. S. Augustine, unlike S. Ambrose, S. Chrysostom, and S. Jerome, is anxious to maintain the entire propriety of the word *wife* as applied to the Blessed Virgin. While maintaining the perpetual virginity of the mother of the Lord, he asserts that there is no deception in the words of the angel, "Fear not to take unto thee Mary thy wife." From this and similar passages it would appear to follow that the copula is not, according to S. Augustine, essential to the marriage union. In the treatise against Julian he says distinctly "that there can be husband and wife (conjuges) without the bodily union." Yet in the same treatise he remarks that "the truth of nuptials consists not *alone*, as thou ravest, in the cohabitation of male and female, although without that nuptials cannot procreate sons." The word *alone* here seems to indicate that while the copula did not constitute the whole of the "truth" or essential character of marriage, it did form a part of it. It may be that S. Augustine would not have failed to recognise a grave and essential difference between the status with the copula and the status without the copula; and that the argument which insists on the term *wife* for the Blessed Virgin is in fact an argument rather about words than about things. S. Augustine, however, is commonly regarded as the chief supporter among the fathers of the view that the copula is not of the essence of marriage.

The review which has now been made goes to shew that,

with the exception of the great name of S. Augustine, the testimony of the first five centuries of Christianity, like that of Holy Scripture, maintains the essential character of the copula.

During the first five centuries the copula held to be essential.

B. *The Middle Ages.*

It is hardly of importance to pursue this subject during the period from the fifth to the eleventh centuries. Passing these centuries by, and coming now to that period of Church history which embraces the codification of the canon law by Gratian, and the theology of the schoolmen, there becomes apparent the most marked contrast between (a) theory and (b) practice. In theory there is, speaking generally, a tendency to affirm that the copula is not of the essence of Christian marriage. The tendency is, however, by no means universal. In the practice of the courts, on the other hand, the essential character of the copula may be said to be everywhere admitted.

B. The Middle Ages.

Great contrast between theory and practice.

(a) *Theory.*

(a) *Theory.*

In considering the teaching of the schoolmen, it is perhaps less important to trace the tendency of opinion on this subject, from the historical point of view, than to examine the grounds on which the view that the copula is not of the essence of marriage was adopted by some prominent theologians. These appear to have been mainly three: (1) that there was no copula in Paradise; (2) that the Blessed Virgin Mary was a wife; and (3) that the copula is necessarily shameful.

(a) *The Schoolmen.*

(1) S. Thomas Aquinas decides¹ that the copula is not of the integrity of marriage, considered in itself, chiefly, it would seem, on the ground that, although there was marriage in Paradise, the copula found no place there. But, it is argued, the marriage in Paradise was complete, therefore the copula cannot be essential.

1. The copula in Paradise.

The remarkable statement with regard to the marriage of Paradise, that "*ibi non fuit carnalis copula*," appears to be due to an impression that the present method of human generation

¹ *Summa*, par. iii. supp. Quaest. 42, art. 4.

was a result of the Fall.¹ It is true that in the primal curse GOD said to the woman, "I will greatly multiply thy sorrow and thy conception; in sorrow thou shalt bring forth children; and thy desire shall be to thy husband, and he shall rule over thee." It is also true that there is no record of any conception or birth in the unfallen state, and that the first record following upon the narrative of the expulsion from Eden is, that "the man knew Eve his wife; and she conceived and bare Cain, and said, I have gotten a man with the help of the Lord."² These passages, however, in no way exclude the copula from the original institution of marriage as ordained by GOD in the state of innocence, while the passages quoted in chapter III. indicate plainly that the Divine institution made express provision for the copula. S. Thomas's premise cannot therefore be admitted, and his conclusion, so far as it is based upon the premise, falls. It should be noticed that while S. Thomas concludes that the copula is not of the essence of marriage considered in itself, he holds that it may be spoken of as essential in a secondary sense: as being required for the working of marriage (*secundum perfectionem secundam, quæ consistit in operatione*).

2. The
marriage
of the
B.V.M.

(2) The most common argument, however, is the argument that, inasmuch as the Blessed Virgin Mary was a wife, the copula cannot be of the essence of marriage. It is an argument which had been employed by S. Augustine, who says, "Mary is called wife from the first faith of her espousals, although Joseph had not known her, neither was to know her by sexual intercourse; yet the title of wife, which had remained, was not mendacious, even where there had not been, nor was to be, any union of the flesh."³ It has been seen that this quotation may have represented S. Augustine's views only from one side; but the

¹ This view is often attributed to S. Augustine, but, incorrectly as the following passages shew: "Quamquam enim jam emissi de paradiso convenisse et genuisse commemorantur; tamen non video quid prohibere potuerit, ut essent eis etiam in paradiso honorabiles nuptiae et torus immaculatus."—*De Genesi ad litteram*, lib. ix. c. 3. (Migne's Ed. tom. iii. p. 395.) "Cur ergo non coierunt, nisi cum exiissent de paradiso? Cito responderi potest, Quia mox creata muliere, prius quam coirent, facta est illa transgressio, cujus merito in mortem destinati, etiam de loco illius felicitatis exierunt."—*De Genesi ad litteram*, lib. ix. c. 4. (Migne's Ed. tom. iv. p. 395.)

² Gen. iv. 1.

³ S. Augustine. *De Nuptiis et Concupiscentia*, cap. 11.

argument is one which has been constantly brought forward. With the spirit of it there is much scope for sympathy; it seems indisputable that the Blessed Theotokos should have all the ordinary perfections of the state in which she was found worthy to be Theotokos. Yet surely it was only possible for her to be Theotokos as being S. Joseph's wife in an imperfect sense. The perfection of her state as the chosen of God excluded in fact the perfection of her state as the wife of S. Joseph. It need not, indeed, be said that the term *wife* is therefore "mendacious" as applied to her, as S. Augustine's argument suggests. Although it does not in her case connote all that is commonly connoted by it, there is no other word which we are prepared to use in its place to indicate the relation of the mother of the Lord to the appointed partner and protector of her early womanhood. But the entire perfection of the human wife in her relation to her husband involves more than the Blessed Theotokos could give.

It should not be overlooked in connexion with this argument that the Blessed Virgin and S. Joseph were united by a contract under the Jewish and not under the Christian law. That there was no failure of intention in the mind of either, whether on the point of indissolubility or on that of exclusive fidelity, may well be assumed without dispute, but that neither of these points was necessarily involved in the contract as externally ratified by the Mosaic law is matter of certainty. When, therefore, it is argued that the expression of marital consent must be sufficient to constitute a marriage, because no more is forthcoming in the case of the perfect marriage of the Blessed Virgin and S. Joseph, it must be replied that in the case of that marriage the expression of consent itself appears to have been defective as being subject to the lax provisions of the Mosaic code. Further, whatsoever might or might not be contained in the conjugal consent, it was not possible that in any case, even in this, Holy Matrimony could have its true perfection so long as man was in the state of the Fall, and the outpouring of the Holy Spirit had not yet come. Granting, for the sake of argument, all that may be asked about the sanctifying influence of the Holy Spirit upon

the Blessed Mother, how, in the case of S. Joseph, could the perfection of any human estate be found in anticipation of the redemption? Was it not true of him at that time as it was true of S. John the Baptist, that "he that is least in the kingdom of heaven" was "greater than he"? It follows that the marriage of S. Joseph and the Blessed Virgin Mary was not Christian marriage, and the argument from the perfection of their marriage therefore falls.

3. The
shame of
the copula.

(3) The third principal argument which has prevailed is derived from the sense that the copula is too much encompassed about with shame to admit of its forming an essential part of a holy ordinance. The feeling is no new one. The writer of the epistle to the Hebrews was doubtless dealing with it when he taught that "marriage is honourable in all, and the bed undefiled." It must have been because of this feeling that the Apostolical Constitutions laid down that "marriage is honourable and chaste, and the begetting of children pure, for nothing evil subsists in the excellent."¹ A long array of passages illustrating this very intelligible shrinking might easily be collected. It is much found in the literature of the Western Church of the Middle Ages, which has suffered greatly in its theology of marriage from the fact that its writers have been almost invariably celibates. With regard to the feeling it may be fully admitted that the "shadow of a shame" must always be found even in the Holy Marriage of a race no longer innocent, although redeemed; but marriage, however stained by the Fall, is still the same institution which God ordained in Paradise, where shame was not, and if the copula was of its essence then, it is of its essence now.

The teaching that the copula is not an essential of marriage has been adopted by most doctrinal writers of the later Western Church. The arguments adduced are almost invariably those which have just been considered.

(β) The
Canonists.

The theologians, however, are not the only teachers on the subject of the requirements of marriage. It is indeed a subject on which their teaching is apt to be rather academic than practical. For many hundred years past in the West the real treatment

¹ *Apostolical Constitutions*, lib. vi. c. 28.

of actual difficulties and the determination of the practice of the Church in such matters has been rather in the hands of the canon lawyers. As will presently be shewn, the practice of the courts has invariably been to treat the copula as essential; but the canonists no less than the theologians have their theoretic teaching as well as their actual practice, and there has been considerable diversity in the theoretic teaching even of the canonists. Gratian and his early successors may be said to have maintained that the copula was essential; in later times it has been more usual to adopt the contrary view. Gratian referring to the statements of the *Opus Imperfectum* and of S. Ambrose thus paraphrases: "The copula without the will to contract marriage and the deflowerment of virginity without the conjugal pact does not constitute marriage, but the antecedent will to contract marriage and the conjugal pact bring it about that the woman in the deflowerment of her virginity or in the copula is said *nubere*, to marry the man or to celebrate a marriage."¹ Gratian therefore holds that the conjugal consent and the copula are both of the integrity of marriage in the full sense of the word. In other words, he recognises a grave difference between the status of those who are only united by consent, and that of those who have consummated their marriage. In another passage, while allowing the word *conjugium* to be applied to either status, he draws a distinction destined to become well known between *conjugium initiatum*, marriage initiated, and *conjugium ratum*, marriage ratified. "It is to be understood," he says, "that marriage is initiated by betrothal, and perfected by the copula. Whence there is *conjugium* between a man and a woman betrothed, but it is *conjugium initiatum*, marriage initiated; between those who are united by the copula it is *conjugium ratum*, marriage ratified."¹

Considerable
diversity
of theory.

Gratian.

*Conjugium
initiatum
and
conjugium
ratum.*

¹ Gratian's *Decretum* (dicta to c. 45. C. 27, qu. 2), "Coitus sine voluntate contrahendi matrimonium et defloratio virginitatis sine pactione conjugali non facit matrimonium, sed praecedens voluntas contrahendi matrimonium et pactio conjugalis facit, ut mulier in defloratione suae virginitatis vel in coitu dicatur nubere viro vel nuptias celebrare."

¹ Gratian's *Decretum* (dicta to c. 34. C. 27, qu. 2.) "sciendum est, quod conjugium desponsatione initiatur, commixtione perficitur. Unde inter sponsam et sponsum conjugium est, sed *initiatum*; inter copulatos est conjugium *ratum*."

The enormous influence of the *Decretum* will justify this notice of the teaching of Gratian, but it is hardly necessary to follow the history of opinion on this subject in any detail. Many, probably most, modern canonists have held that the copula is not essential to marriage, while at the same time a distinction is usually made between marriages which have been consummated and those which have not been consummated. They are described as different *kinds* of marriage. In connexion with the attitude of those who assert that the copula is not essential, it is well to remember (1) that the influence of the Roman civil law upon the canonists of the middle ages amounted to an ever-present tyranny, the old maxim of the civil law, *Nuptias non concubitus sed consensus facit*, being in full acceptance; and (2) that for the purposes of legal practice, however essential the copula may otherwise be, it is necessary to select some demonstrable act as the sufficient evidence of marriage. The different character induced by the copula is, however, seldom entirely overlooked. Thus Van Espen remarks:

“Although *matrimonium ratum* is true marriage even before consummation, and nothing is wanting to it for the true character (*ad rationem*) of marriage, yet, notwithstanding, it receives by the consummation a certain perfection as regards its significance, and the bond of marriage is rendered more indissoluble, as is shewn below in the title *De Divortiis*.”¹

(b) *Practice.*

(b) **Practice.** Far more important, however, in a matter of this sort than any amount of theory, even when supported by the greatest names, is the actual practice of the Church. If, as a matter of fact, when the theories of teachers were brought to the touchstone of practice, they vanished away, their value as Christian tradition sinks to a very low level. And it may be said to be the case that when the theory that the copula was not of the essence of marriage was so brought to the test, it was found thus to vanish away.

¹ Van Espen. “Quamvis matrimonium *ratum* etiam ante consummationem sit verum matrimonium: nihilque ipsi desit ad rationem matrimonii; nihilo minus per consummationem accipit quandam perfectionem, quantum ad significationem; redditurque vinculum matrimonii magis indissolubile, ut infra titulo *De Divortiis* ostenditur.” (*Jus Ecclesiasticum Universum*, tit. xii. c. 4.)

The practical test occurred in connexion with the doctrine of the indissolubility of Christian marriage. The Church held Christian marriage to be indissoluble; but was an unconsummated marriage in such sort Christian marriage that it could not be dissolved? In the ordinary run of marriages the question of course would never arise, but it might do so in two sets of cases. It would arise where there was physical incapacity, whether from insufficient age or from other cause; and it would arise in cases where the expression of the contract was removed from the consummation by some length of time, and the parties, for whatsoever reason, became in the interval disinclined to fulfil the contract.

(a) *Physical Incapacity.*

(1) *Impediment of Impotence.* According to the Roman law, the only adult persons who were incapacitated on this ground from effecting a legal marriage contract were those eunuchs (*castrati*) who had been the subjects of a surgical privation.¹ Even in the case of other eunuchs (*spadones*, *thlibiai*) there was no legal incapacity, apparently because their condition was not matter of notoriety.² Physical impotence was, however, always regarded as an obvious ground of divorce, and in a system where divorce was of the readiest application nothing more was needed.

(a.)
Physical
Incapacity.
1. Impe-
diment of
Impotence.
The Roman
Law
admitted
ready
divorce.

The Christian sense of the unrighteousness of ordinary divorce led, however, to a higher estimate of the status of marriage than could be held under the old Roman view, that the status stood or fell with the maintenance of mutual consent. With this higher view of the status of marriage came necessarily a closer examination of the conditions essential to it, and it is not surprising therefore to find that Justinian, who under Christian influence introduced into the Roman law many limitations of divorce not previously accepted, should have maintained that impotence was a legitimate ground of divorce. His legislation on this subject was accepted without scruple by the Eastern Church, and remains embodied in its canon law to the present day. At first Justinian required that a period of

The
Christian
asked if the
marriage
was in-
dissoluble.

Justinian.

¹ *Digest*, xxiii. 3, 39.

² *Ibid.*

should be admitted on this ground. This was in a constitution addressed to Mennas, Patriarch of Constantinople in A.D. 528.¹ In the 22nd Novel, however, which was published in A.D. 536, he altered this provision, remarking that since the publication of the constitution it had been found that men who had shewn themselves incapable for two years sometimes resumed their physical powers later.² In the Novel, therefore, he requires for a divorce on this ground that three years of incapacity shall have succeeded the celebration of the marriage. It is in this form that Justinian's enactment was embodied in the *Nomocanones*, and that it remains at the present time a law of the Eastern Churches.³

It should be noticed that the three years' period must be at the commencement of the married life, and before any copula has found place. Once the copula effected, incapacity subsequently supervening is no ground of divorce. It will be seen, therefore, that the term divorce is really misleading as applied to the essential character of the union. Before the law, since an outward ceremony had been taken as sufficient evidence for the constitution of marriage, so an outward divorce was necessary to dissolve the bond which the law had bound. But from the point of view of the union considered in itself and apart from the law, it had simply never become a marriage, and therefore, strictly speaking, there could be no divorce. In the nature of things the union was null and void. It was this essential nullity which justified the provision of legal divorce; and the enactments, in requiring that the years of incapacity should not have been preceded by the copula in marriage, did in fact, though not admittedly, base upon this essential nullity.

The West
Hinkmar.

In the West much the same results were at least ultimately arrived at. Hinkmar of Rheims, who is very clear on the whole subject of the copula, lays down distinctly that there is no divorce in a case of impotence inasmuch as the marriage is never completed, and is therefore simply null from the first.¹

The
Canonists.

Gratian,² and after him Roland (Alexander III.), and several

¹ *Cod.* v. 17, 10.

² *Nov.* 22, c. 6.

³ Zhishman, *Eherecht der Orientalischen Kirche*, p. 759, quoting Photius, *Nomocan.* xiii. 4, and other authorities.

⁴ Freisen, *Can. Eherecht*, p. 335.

⁵ *Decretum*, C. 33, qu. 1.

other glossators take substantially the same line.¹ With the ruling of Alexander III., that a *desponsatio de praesenti* was to be accounted a sufficient marriage, and therefore ordinarily indissoluble,² came the result that the marriage of an impotent person who had been united by the *desponsatio de praesenti* was accounted to be marriage. Alexander, however, conceded that, if such were the general custom of the Gallican Church, the marriage tie might be dissolved on the ground of impotence, notwithstanding the ruling which gave such force to the *desponsatio de praesenti*.³ Alexander III.

Some three centuries later (22 June, 1587) Sixtus V. re-affirmed the nullity of the marriage of eunuchs.⁴ Sixtus V.

The present Canon law practice of the Roman obedience, according to Von Schulte, is as follows:— Present practice of the Latin Church.

1. If after an examination by medical experts there is an unanimous opinion that the impotence is natural and lasting (whether absolute or relative), and that it is externally recognisable as such, and further that it is not removable by medical art at least without danger to life, the marriage may be declared null without further ado, a further cohabitation having indeed become unseemly in the face of such a fact, and that now a matter of public notoriety.

2. If the medical testimony is unanimous that the impotence is beyond doubt, but that its diagnosis rests not on external but on internal grounds, an oath is required from both the parties that the copula has not taken place, an oath being also taken from seven relatives or friends that to the best of their knowledge and belief this statement is true. Failing seven such attestations there must be at least two. Nullity of marriage may then be declared.

3. If neither the certainty of actual observation nor yet moral certainty is forthcoming, or if the medical experts are not agreed, and the possibility of collusion has not been removed by other subsequent examination, the experiment of three years' cohabitation must be tried as by the law of

¹ Freisen, *Can. Eherecht*, p. 345. ² *Ibid.* p. 191. ³ *Ibid.* p. 347.

⁴ Constitutio Sixti V., "Quum frequenter" (*Bullarium Romanum*, tom. iv., p. 4, quoted by Von Schulte, *Handbuch des Katholischen Eherechts*, p. 81).

Justinian. After the expiration of the three years, if on further trial is thought desirable, nullity may be declared on the confirmation of the impotence by oath of both parties, or by oath of the complaining party with his attestors.¹

The
Church of
England.

The practice of the English Church in the matter of physical incapacity is entirely in accord with that of the rest of Christendom. Theodore's *Penitential*, indeed, went so far as to sanction divorce with re-marriage for supervenient incapacity,² but, as will be seen in chapter VII., this laxity was not long suffered. Where, however, the copula had not found place there was never any question but that the marriage was essentially null.³ In the middle ages the ordinary canon law of the West was in marriage cases the rule in England. Since the Reformation there has been here no change, physical incapacity being always held adequate ground for a declaration of nullity.⁴

The copula
is thus
treated as
essential.

Thus the continuous practice of the Christian Church has been to withhold or to withdraw sanction from any marriage in which either party has been certainly impotent from the time of solemnization onwards. Sometimes the withdrawing of sanction has been termed a divorce, sometimes more correctly described as a declaration of nullity of marriage; but neither in the East nor in the West have marriages been allowed to stand in the face of proved physical incapacity. Such action can only be justified on the ground that physical capacity is essential to marriage, and physical capacity can only be essential if the completion of the copula is essential.

2. Impedi-
ment of
Age.

(2) *Impediment of Age*. By the Roman law, which in this matter was simply accepted by the Christians of the Empire, the age of puberty was regarded as the age from which marriages might be made, and before which they were inadmissible. Justinian assigned a conventional age as most convenient for the practice of the law. Fourteen years in a male and twelve

Justinian.

¹ Von Schulte, *Handbuch des Katholischen Eherechts*, pp. 98, sqq.

² Theodore's *Penitential*, xii. 12. (In Haddan and Stubbs, iii. p. 201.)

³ *Ibid.* xii. 32.

⁴ Phillimore's *Burn's Ecclesiastical Law*, ii. p. 500 . . . "impuberty, malformation, or frigidity; when the marriage itself was merely void *ab initio*, and the sentence of divorce merely declaratory of its being so."

in a female were henceforth to indicate for all public purposes the attainment of puberty.¹ These ages were, speaking generally, the accepted ages throughout Christendom, at least till quite modern times. Leo the Isaurian raised the age to fifteen for the man and fourteen for the woman;² but the standard of Justinian was soon reverted to, and the age of the Canon law alike in the East and in the West is still fourteen for the man and twelve for the woman.³ The ceremony of betrothal was not so limited, as no copula was contemplated by it. By the Roman law *sponsalia* had been admissible from the age of seven.

The ages indicated were avowedly, as they are obviously, chosen as being the approximate ages of physical puberty. The Roman Law, which for legal purposes reduced marriage to a mere contract, was nevertheless so far controlled by the nature of the union as to deny its possibility before the age of the copula. The Christian canon law of the middle ages is found not only accepting the restriction of the Roman law without difficulty, but recognising the essential character of the restriction. The Roman law of Justinian accepted the age assigned as a final determination of the age for a marriage contract. The later Canon law shewed a desire to go behind the assigned ages on occasion, in order to question the natural fact of which those ages were but the approximate expression. The Gloss of the Decretum remarks: "But if he, who has now completed fourteen years, appears to be such an one that he can in no wise generate, and he make the contract, does the marriage hold? Some say that the marriage holds, but I believe the contrary, since neither is there puberty, nor are there found in the union the three benefits of matrimony, which are faith, offspring, and the sacrament."⁴ Other similar expressions of opinion might be adduced.

The later
Canon
Law.

The impediment of age is therefore really nothing more than a particular case of the impediment of impotence. It simply

¹ Code v. 60. 3. See too *Digest*, xxiii. 2. 4.

² Zhishman, *Eherecht der Orientalischen Kirche*, p. 202, quoting the Eclogue ii. 1.

³ For the East, see Zhishman, *Ibid.* pp. 202, 203. For the West, see Von Schulte, *Handbuch der Katholischen Eherechts*, pp. 76 *sqq.*

⁴ Freisen, *Can. Eherecht*, p. 327. The Gloss is on c. 3 x (iv-2).

deals with the same fact from a different point of view. It was naturally treated under a separate head; but the ground of incapacity is essentially the same. It may be noticed that the indication of the age of puberty as the necessary limit before which actual marriage was inadmissible, made it possible to extend some recognition to mere betrothal in the case of young children.

Puberty
held to be
essential.

It will be seen at once that the requirement of the age of puberty as a condition of marriage is of the highest importance in considering the question whether the copula is essential to a true marriage or not. It mattered little to the non-Christian Roman, because to him there was never anything in the status of marriage so far essential that it could not be abrogated by mutual consent; but to the Christian, who withheld the liberty of divorce, the constituent elements of the indissoluble status became of the highest importance. The law of Christendom may be said to have unanimously decided that puberty is a necessary condition of the indissoluble status. Here, again, it is clear that puberty can only be necessary because the copula is necessary.

β.
Absence of
copula from
causes
other than
physical
incapacity.

(1)
Contracts
de praesenti.

β. *Absence of copula from causes other than physical incapacity.*

(1) *Contracts de praesenti.* While the action of the Church in respect to the impediments of Impotence and Age may be said to sufficiently determine the fact that the copula was held to be essential to Christian marriage, there were certain other cases in which the principle was disputed. Such were the cases in which the contract had not been followed by the copula at the time, and in which the parties were desirous of rescinding the contract before such consummation was effected. All the legal teaching as derived from the Roman Civil Law laid down that the contract effected marriage sufficiently. On the other hand the teaching of the Christian Church required the recognition of Christian marriage as not merely a contract, but as an estate which was indissoluble. If, without considering what went to constitute the estate of marriage, these two lines of teaching were brought abruptly together, there followed the result alien alike from the Roman law and from the mind of the Christian Church, that a marriage formally contracted was

indissoluble, although it had not been consummated. In the twelfth century this view obtained considerable favour. Innocent II. (A.D. 1130–1143) gave expression to it in connexion with a case which was submitted to him. “I pronounce,” he says, “that, the lawful consent intervening, she is a wife directly from that moment in which by spontaneous concession she declares herself to be a wife. For it was not a future marriage which was promised, but a present marriage was established.”¹ Some twenty years after Innocent II. (A.D. 1159), Alexander III., who had been already well known as a canonist under the name of *Magister Rolandus*, gave the following ruling: “On this matter, however, we reply to your enquiry thus, that if between the man and the woman lawful consent *de præsenti* intervene in connexion with the solemnization which is commonly observed, that is to say, there being present a priest, or even a notary, as is the practice in some places even to the present day, and (the consent being expressed) before fit witnesses in such sort, that each expressly accepts the other with the accustomed words in their mutual consent, each saying, ‘I receive thee for my wife,’ or, ‘I receive thee for my husband,’ then, whether an oath be interposed or not, it is not lawful to the woman to marry another man. And although she have married another man, and even if the *copula carnalis* have followed, she ought to be separated from him, and compelled by ecclesiastical discipline to return to the first, although others think otherwise, and judgment has been sometimes otherwise given even by some of our predecessors.”² This concluding admission that the tradition of the past was not with him in this matter is well worthy of notice in connexion with Alexander III.’s remarkable decision. It may well be doubted whether any similar decision had ever been either given or acted upon in the first thousand years of the Church’s history. During those centuries in which mutual consent was admitted by the State to be a sufficient ground for the dissolution of marriage, it is probable that in any case of contract without copula where dissolution was desired the parties would effect the dissolution in the ordinary way before the law, and

Innocent II.

Alexander
III.
The copula
not
essential.¹ Fréisen, *Can. Eherecht*, p. 190.² *Ibid.* p. 191.

Case of a
party desir-
ing to
undertake
monastic
obligations.

the Church would take no heed. In one event certainly it had all along been admitted that there might be dissolution. If either party desired to undertake the obligations of the monastic life before the consummation of a marriage had taken place, it had never been denied that such religious professsion might still be made, notwithstanding the most formal of marriage contracts. The case of S. Alexius, who left his young wife on the wedding-day to lead a hermit's life, is an early instance.¹ So far from there being any dispute in such cases the tendency was rather in the direction of suffering persons to embrace the monastic life, even when their marriages had been consummated, the Eastern Church in such cases being prepared to admit a divorce, and the re-marriage of the partner left in the world.² The Western Church here followed S. Gregory in refusing any such divorce after consummation, but an unconsummated marriage had never been allowed to stand in the way of religious profession. Accordingly Alexander III. notwithstanding his rigorist reading of the force of consent, expressed *de praesenti*, found himself obliged to provide that whatever the relation so induced might be, it was dissolved, and dissolved *a vinculo*, in the case of a person making a religious profession.³ It has been noticed that he made a similar concession in cases of impotence to the "custom of the Gallican Church."

Consent
de praesenti
and *de*
futuro.

To Alexander III. is due the formal recognition and statement of the distinction which was to play so great a part in the following centuries, between consent expressed *de praesenti* and that which was only *de futuro*. If a man and a woman take one another solemnly *de praesenti*, from that present moment, as man and wife, the contract holds, according to Alexander III., whether consummated or not.⁴ If the contract be *de futuro*, or only an undertaking to effect a marriage at some future time,

¹ A very interesting fresco at S. Clement's, Rome, has the story of S. Alexius for its subject. See Father Mullooly's book on S. Clement's.

² See Chapter VII.

³ Alexander III. Salernitano Archiepiscopo: "Quia cum non fuissent una caro simul effecti, satis potest unus ad Deum transire, et alter in seculo remanere." (Quoted by Van Espen, tit. xv.)

⁴ Freisen, *Can. Eherecht*, pp. 191-196.

it is not yet a marriage, and cannot be held to bind indissolubly without further ratification. This distinction at once threw off a large number of cases which would have presented difficulties; but the strict line taken with regard to consent *de præsenti* is sufficiently difficult to reconcile with Christian tradition. As has been seen, Alexander III. had to recede from it in the case of persons undertaking monastic obligations, and in the case of persons physically incapable; while the difficulties induced by it have been such, that the later Western Church has been led to adopt a doctrine absolutely unknown to Christian antiquity, the doctrine, that is to say, that although an unconsummated marriage is ordinarily indissoluble, such a marriage may upon occasion be dissolved by Papal dispensation.

Thus the present practice of the Roman communion, while it consistently and uprightly denies that a consummated marriage can be dissolved by any human power, asserts that there is no case of unconsummated marriage which cannot on occasion be dissolved. It follows that the copula is held to be essential for an indissoluble Christian marriage.

(2) Contracts *de futuro cum subsequente copula*. The same conclusion follows without much difficulty from the practice of the Church in regard to another class of cases. The distinction of Alexander III. between contracts *de præsenti* and contracts *de futuro*, while it sought to rigorously impose the marriage character upon the former, dismissed the latter from the category of marriages altogether. But if a contract *de futuro* should happen to be followed by the copula, it was held to have become a marriage. Even Alexander III. ruled that in such a case the marriage effected could not be superseded by any *desponsatio de præsenti* which might be entered into subsequently,¹ and the ordinary recognition of these irregular marriages soon became the acknowledged rule of the courts." This recognition continued to form part of the law of England till the passing of Lord Hardwicke's Act in 1753, and it was usual, as elsewhere in Christendom, to append to the recognition an order to the parties to proceed to solemnize their marriage *in facie Ecclesiae*. The theologians who deny that

¹ Freisen, *Can. Eherecht*, p. 193.

the copula is essential explain the practice of recognising these marriages by the statement that the copula is here the evidence of the present character of the consent. But the fact remains that a marriage so effected stands in Christian practice as indissoluble because the copula has found place, while no marriage, with whatsoever solemnity of consent, is treated as necessarily indissoluble so long as it remains without consummation.

Practice
treats the
copula as
essential.

It thus appears that the practice of the Church is overwhelmingly in favour of the view that the copula is of the essence of Christian marriage. This cannot be said of the theoretical teaching of the theologians, or even of the canonists, of the latter half of the Christian centuries. The earlier tradition, on the whole, treated the copula as essential.

(iii) Reason. The question, which, it should be remembered, is of high importance in practice, is one with respect to which we have not only to consult Holy Scripture and Christian tradition, but it is one to which Reason has necessarily much to say. The Christian theorists who assert that a marriage is entirely constituted in its essential character by consent *de praesenti* are found to assert not only that proposition, but two other propositions with it. They teach—

(1) That marriage, by Divine institution, is indissoluble.

(2) That unconsummated marriage is dissoluble in the cases of—

(a) Physical incapacity.

(b) Religious profession.

(c) Papal dispensation.

(3) That consent *de praesenti* is the sole essential for the marriage of baptized persons, the copula not being essential.

By the laws of Reason any two of these propositions may be held together, but all three cannot be so held. It may be held that (1) marriage is indissoluble, and (2) that unconsummated marriages may be dissolved; but in that case it cannot be held (3) that consent alone constitutes an indissoluble marriage. It may be held (1) that marriage is indissoluble, and (3) that consent makes an indissoluble marriage, but then it cannot be

held (2) that unconsummated marriages may be dissolved. It may be held (2) that unconsummated marriages may be dissolved, and (3) that consent is sufficient to constitute a completed marriage, but then it cannot be held (1) that marriage is indissoluble. We are here in face of one of those difficulties raised by the necessary laws of thought which no accumulation of traditional teaching can overcome. The three propositions are of a character which falls fairly within the scope of the ordinary laws of logic, and by those laws, notwithstanding all which may be adduced to the contrary, no man who can think is able to hold these three propositions at one and the same time.

If, then, rejecting an impossible attempt, we return to the teaching of Holy Scripture and the more prevailing Christian tradition for guidance, and accept the essential character of the copula, the following group of propositions is the result :

1. That Christian marriage is indissoluble.
2. That unconsummated marriage may be dissolved.
3. That the copula, as well as mutual consent, is required to constitute marriage complete and indissoluble.

B. IS MARRIAGE A CONTRACT OR AN ESTATE ?

The considerations which have occupied this chapter make it possible to understand the enormous difference which exists between the Christian conception of marriage and that which was entertained by the Romans. That difference may be briefly expressed by the statement that to the Roman marriage was a contract, while to the Christian it is an estate (status). The Roman declined to find anything in marriage which the contract had not placed there ; and since a contract had made marriage, a contract could unmake it. It was born of mutual consent, and with the death of mutual consent it too must die. Such as it was while it lasted, it was to be explained by the terms and conditions of the contract, expressed or implied. The contracting parties had created the relation, and in explaining it there was no call to go behind the contracting parties.

Marriage
to the
Roman a
contract ;
to the
Christian
an estate.

To the Christian, on the other hand, this view of the marriage relation was from the first inadmissible. A contract there must doubtless be as a preliminary of marriage; but marriage was to the Christian an "honourable estate instituted of God," and accordingly the nature, obligations, and privileges of marriage were to be sought not only or chiefly in the terms and conditions of the contract, but in the institution of the Founder. The contract was a mutual undertaking to live together in a Divinely instituted estate, and with the initiation of that estate the contract might be said to be fulfilled. The estate was initiated by the copula, and accordingly, when once the copula had followed on the contract, the estate was held to be in force, and it was no longer open to the parties to rescind or modify their contract. The estate once sufficiently constituted could only with Christians be the one Divinely instituted estate of Holy Matrimony, and as such was indissoluble.

C. OF THE IMPEDIMENTS WHICH HINDER CHRISTIAN MARRIAGE.

The impediments to marriage are commonly enumerated in theological handbooks somewhat as follows:¹

1. Error.
2. Force and Fear.
3. Consanguinity (with (*a*) spiritual and (*b*) legal Cognation).
4. Affinity (with Public Honesty).
5. Impotence.
6. Age.
7. Condition.
8. Crime.
9. Abduction.
10. Clandestinity.
11. Existing marriage (Ligamen).
12. Holy Orders.
13. Religious Profession.
14. Difference of Christian worship (Disparitas cultus).
15. Difference of religion (Mixta religio).

¹ Error, Conditio, Votum, Cognatio, Crimen,
Cultus disparitas, Vis, Ordo, Ligamen, Honestas,
Ætas, Affinis, si Clandestinus et Impos,
Raptave sit mulier, nec parti reddita tutæ.

The impediments of (1) Error and (2) Force and Fear, with (9) Abduction, so far as it affects consent, have already been noticed under the heading of Consent; and those of (5) Impotence and (6) Age have similarly been considered in connexion with the copula. The impediments of Relationship (3, 4) will be treated in the chapter on the subject; the impediments from difference of worship or religion (14, 15) will be noticed in connexion with the Re-marriage of Converts; and the impediment from existing obligation (11) will be abundantly illustrated in the chapters on Divorce and Polygamy. The remaining impediments, being of human imposition, will not concern this treatise, which deals only with the Divine institution. They are (7) Condition, which has disappeared from Christendom with the disappearance of slavery; (8) Crime and (9) Abduction, so far as it does not affect consent, two impediments where the prohibition to marry is properly a penalty assigned to misconduct; (10) Clandestinity, or the failure to fulfil the positive rules of the Church as regards solemnization; (12) Holy Orders and (13) Religious Profession, which only exclude the estate of marriage under local or particular regulations.

D. IS MARRIAGE A SACRAMENT?

This question has given rise to much warm disputation, which for the most part has been singularly barren. The answer to the question must obviously depend very largely on what is meant by the word *Sacrament*. The meanings of the word Sacrament.

1. The word *Sacrament* is sometimes broadly used to cover all those ordinances and incidents in which an inward and spiritual energy is connected with an outward and spiritual sign.¹ Such *sacramental* ordinances are not confined to the

¹ This is one of the significations admitted by the English Homily: "And writing to Bonifacius of the baptism of infants, he saith, If sacraments had not a certain similitude of those things whereof they be sacraments, they should be no sacraments at all. And of this similitude they do for the most part receive names of the self-same things they signify. By these words of S. Augustine it appeareth that he alloweth the common description of a sacrament, which is, that it is a visible sign of an invisible grace; that is to say, that setteth out to

Christian dispensation. The tree of life and the brazen serpent are instances of Old Testament sacraments in this sense.

2. In the Vulgate and in the writings of the early Fathers the word *sacrament* is used in a loose sense, which may be said to cover any mystery of the Faith.

3. The Anglican Catechism defines a sacrament as not only "an outward and visible sign of an inward and spiritual grace," but farther requires that it be "ordained by Christ Himself, as a means whereby we receive the same and a pledge to assure us thereof." So too the 25th Article distinguishes between the "two sacraments ordained of Christ our Lord in the Gospel" and the "five commonly called sacraments."

4. The Anglican Homily *Of Common Prayer and Sacraments*, while admitting some very broad senses of the word *sacrament*, says that "according to the exact signification of a sacrament" we may only understand those "visible signs expressly commanded in the New Testament, whereunto is annexed the promise of free forgiveness of our sins, and of our holiness and joining in Christ."

5. Perhaps the most common definition of a sacrament in use among modern theologians is that which defines it as "the outward and visible sign of an inward and spiritual grace," limiting *grace* to the grace of the Holy Spirit accorded to Christians, but refusing all other limitations, such as that which requires that the sacraments shall be specially "ordained by Christ our Lord in the Gospel." Consequently this definition does not include non-Christian ordinances as sacraments, but it accords the name to any Christian ordinances which unite an "outward and visible sign" with an "inward and spiritual grace."

Several other meanings in which the word *sacrament* has been used might be cited, but for the purpose of this treatise it

the eyes and other outward senses the inward working of God's free mercy, and doth, as it were, seal in our hearts the promises of God. And so was circumcision a sacrament, which preached unto the outward senses, the inward cutting away of the foreskin of the heart, and sealed and made sure in the hearts of the circumcised the promise of God touching the promised seed that they looked for."—Homily *Of Common Prayer and Sacraments*.

appears unnecessary to follow them.¹ The meanings which have been cited may now be considered as to whether they are or are not applicable to the ordinance of marriage.

1. *The Sacrament or Mystery of Marriage irrespective of Christianity.*

In that broad sense of the word *sacrament* which applies it to all those ordinances and incidents in which an inward and spiritual energy is connected with an outward and visible sign, it may be fairly said that the sacramental character is everywhere impressed upon God's dealings with mankind. It would seem that He adapted His communications to that composite nature of the race, which is neither pure spirit nor mere flesh. The Tree of Life was one of the Sacraments of Eden: to eat of it was to live for ever. The Tree of the Knowledge of Good and Evil not only supplied a test of obedience, but was the channel of an inward working. The Brazen Serpent in the wilderness was another such sacrament: to gaze upon it was to be healed, while not to gaze upon it was to forego the healing benefit. The inward energy was attached to the outward symbol. Circumcision was a continuing ordinance in which the outward sign was connected by God's covenant with special

¹ Cp. Dean Paget in *Lux Mundi*, p. 424: "The dispute as to the number of the sacraments is indeed a 'question of a name'; and it ought to have been acknowledged all along that the name was being used with different and shifting meanings. That men knew that it did not designate an essentially distinct class of exactly equivalent units is shown on all sides; S. Thomas Aquinas seems to doubt, at least, whether there are not more than seven sacraments, divides the seven into groups with very important notes of difference, and decides that the Eucharist is 'Sacramentorum omnium potissimum': Calvin was not unwilling that the laying on of hands should be called a sacrament, though he would not reckon it 'inter ordinaria sacramenta'; the Council of Trent has an anathema for anyone who says that the seven sacraments are so equal that none is more worthy than another: Richard Baxter distinguishes between 'three sorts of sacraments'; in the second sense of the name, in which it is taken to mean 'any solemn *investiture* of a person, by ministerial delivery, in a state of Church privileges, or some special gospel mercy,' he grants 'that there are five sacraments—Baptism, Confirmation, Absolution, the Lord's Supper, and Ordination'; and elsewhere he declares that 'they that peremptorily say without distinguishing that there are but two sacraments in all, do but harden them (the Papists) by the unwarrantable narrowing of the word.' (Richard Baxter, *Confirmation and Restoration*, pp. 88, 89; *Ecclesiastical Cases of Conscience*, Qu. 99.)"

mercy to the person circumcised. The voice of Moses speaking to the rock, the actions of Elisha in raising the Shunamite's child, the washing of Naaman the Syrian in the Jordan, were all sacramental as connecting an inward working with an outward event. It might not be erroneous to speak of such sacramental incidents as exhibiting an "outward and visible sign of an inward and spiritual grace," but to avoid the confusion arising from the ascription of different meanings to the word *grace*, it is better to define the sort of mystery or sacrament which we are now considering as "the outward and visible sign of an inward and spiritual energy," using the word energy in the sense of the *ἐνέργεια* of Aristotle, that is, a working. So defined, no ordinance or incident may better claim the sacramental character than marriage as first instituted by God in Paradise. Its most evident characteristic was that union in one flesh which was an external fact. Its character of a mystery was due to that marvellous interpenetration of the whole being which is mysteriously connected with the union in one flesh. The highest and most intimate of spiritual friendships can never be marriage without the union of the flesh: but where the man and woman are one flesh, there indefinite yearnings are replaced by the peacefulness of a pervading possession, the inward energy corresponding to the outward union. Marriage is thus an ordinance peculiarly human. It is adapted to man's composite nature which is at once fleshly and spiritual. There is no marriage among the angels; nor is there any marriage among the brutes. The brutes have an instinct of propagation, and its fulfilment appears in some cases to develop certain sympathies; but where these are most developed they obviously fall far short of the harmony of soul and spirit which is given to the human pair. The angels may have capacities of mutual intimacy, but they have no such composite nature as has man, and "they neither marry nor are given in marriage."¹ Man alone has the composite nature, and to man alone is marriage given. It is obvious that in this sense the mystery or sacrament of marriage is prior to and not dependent upon the Christian system. This

¹ S. Matthew xxii. 30. S. Mark xii. 25. S. Luke xx. 35.

mysterious or sacramental character is the character imposed upon the ordinance as first Divinely instituted. It is a character which has never been lost, though variously degraded, in the marriages which have found place since the Fall. It is the character without which there could be no marriage even among the baptized. With the baptized indeed the power of the indwelling Spirit adds, as we shall see, a sacramental character in the specially Christian sense, a character not found outside the baptized; but the fundamental mystery of marriage even among Christians is that of the original ordinance, and is shared by Christians with the remainder of the human race.

2. *The Sacramentum of the Vulgate.*

Coming now to specially Christian senses of the word sacrament, we have first to consider the meaning of the word as it is found in the Vulgate and the Fathers. The writers of the Latin Church often consider it sufficient in reply to the question, "Is Marriage a Sacrament?" to quote the words, "*Sacramentum hoc magnum est.*"¹ But the word *sacramentum* is used in the Vulgate as in the early Latin Fathers in a very indeterminate sense. We read of the *sacramentum* of godliness,² the *sacramentum* of the seven stars,³ the *sacramentum* of the woman and the beast.⁴ The word occurs in the Vulgate sixteen times, and, excluding the passage in which it is applied to marriage, in no one of the other fifteen cases can it possibly mean a sacrament in any sense employed by modern theologians. In the passage "*Sacramentum hoc magnum est,*" the word renders the Greek word *μυστήριον*, which is employed with similar indefiniteness. It has indeed been pointed out by Schöttgen⁵ that the formula, "This is a great mystery," or, more exactly, "This mystery is great," is a formula in common use among the Rabbis. It is clear therefore that originally the words had no special reference to Christian marriage. They may come to have such a special meaning as used by S. Paul; for he goes on to say, "but I

¹ Eph. v. 32.

² 1 Timothy iii. 16.

³ Revelation i. 20.

⁴ Revelation xvii. 7.

⁵ Schöttgen, *Horæ Hebraicæ et Talmudicæ*, Dresden, 1733, tom. i. pp. 783 sqq.

speak concerning Christ and the Church." It is, however, in any case impossible to narrow the meaning of the word *μυστήριον* or *sacramentum* in this passage to the equivalent of *sacrament*, as commonly used by modern theologians of the Christian sacramental ordinances.

The early Latin Fathers used the word *sacramentum* with the same vagueness as the Vulgate. Tertullian calls Baptism and the Holy Eucharist sacraments — "*Sacramentum aquæ*,"¹ "*Sacramentum lavacri*,"² "*Sacramentum Eucharistiæ*;"³ but he also in several places applies the word from the analogy of the military *sacramentum* to the oath of Christian service or abjuration of evil taken in Baptism.⁴ S. Cyprian calls the mysteries of the Lord's Prayer *sacramenta*.⁵ S. Leo the Great speaks of the "*sacramentum* of the Incarnation,"⁶ of the "*sacramentum* of the Lord's Passion and Resurrection,"⁷ of the *sacramentum* of the Scriptures.⁸ S. Augustine speaks of Christian marriage as a sacrament—"The advantage of marriage among all nations and men lies in its being a cause of generation and a bond of chastity, but as concerns the people of God, also in the holiness of a sacrament."⁹ It is plain, however, from another chapter of the same treatise,¹⁰ that he employs the word in a very wide sense indeed, as he speaks of the polygamous unions of the Jews as *sacramentum pluralium nuptiarum*, a sacrament of plural nuptials.

We conclude therefore that while marriage was certainly a *Sacramentum* in the sense of the Vulgate and of the early Latin Fathers, that sense was a very wide one, and not coincident with any sense in which the word is now employed in Christian theology.

3. "*Ordained by Christ Himself*."

The next definition of the word *sacrament* is that which confines it to those ordinances which were ordained "by Christ Himself," or "by Christ our Lord in the Gospel." It is in

¹ *De Bapt.* i. xii.

² *De Virg. Veland.* ii.

³ *De Corona*, iii.

⁴ *De Corona*, xiii. *De Idololatria*, vi. *De Spectaculis*.

⁵ *De Oratione Dominica*, ix. xxviii.

⁶ *Serm.* xxiv. 4.

⁷ *Serm.* lxi. 1.

⁸ *Serm.* lxii. 1.

⁹ *De Bono Conjugali*, c. 24.

¹⁰ *Ibid.* c. 18.

connexion with this somewhat stringent definition of a sacrament that we come across an identical tendency to overlook the essential character of the grace of Christian marriage in very opposite schools of theology. The Protestant bodies tend to deny that there can be any sacramental character in Christian marriage, on the ground that there was no special outward institution of marriage as a sacrament by Christ our Lord in the Gospel; while what we may term the more superficial schools of Roman Catholic theologians, starting from the sacramental character in marriage which has been laid down by the Council of Trent and other authorities, consider it necessary to find some outward institution of the sacrament by our Lord.

A recent Roman Catholic writer, the Rev. Charles W. Wood,¹ writes as follows:

“In the new law our blessed Lord, as the Council of Trent teaches, instituted seven sacraments as means of grace. One of them was Matrimony. . . . It is not known when our Lord actually instituted this particular sacrament. Many of the Fathers” [*sic*, without authorities] “thought that as He sanctified water for washing away sins by being Himself baptized in the Jordan, so He sanctified marriage, and raised it to the dignity of a sacrament, by Himself assisting at the marriage at Cana, when He worked His first miracle; while others refer to the words of our Lord when, in speaking of marriage and its institution by God in paradise, He said, ‘What therefore God hath joined together, let no man put asunder.’²

“And others again think that it was formally ordained by our Lord with other sacraments after His resurrection, when He spoke to His disciples of the kingdom of God.³

“Although the exact time of its institution may not be known, it is nevertheless an undoubted *tradition* that the natural contract of marriage was ennobled and raised to the dignity of a sacrament, and was constituted a sacramental union, perpetual and indissoluble, having annexed to it Divine blessings and graces, which at once transferred marriage from the mere natural to the spiritual and supernatural order of things.

“The Roman catechism refers to this undoubted tradition of the Church, and to the words of S. Paul as proving the Divine institution in his epistle to the Ephesians v. 28.”

¹ *Marriage* (Manchester, 1887), p. 6. ² Matt. xix. 6. ³ Acts i. 3.

Mr. Wood has here summed up the views of many Roman Catholic theologians of more or less accepted authority, whom it is hardly necessary to quote. The opinion that "our Lord sanctified marriage, and raised it to the dignity of a sacrament, by Himself assisting at the marriage of Cana," seems to be sufficiently disposed of when it is remembered that the marriage of Cana, not being between baptized persons, was not a Christian marriage, and could not therefore have the character of a Christian sacrament. Accordingly it is not possible that any Christian sacrament of marriage was first instituted in connexion with the marriage at Cana.

The reference of the institution to the words, "What therefore God hath joined together, let no man put asunder," is perhaps less open to objection. It appears to be clear that our Lord, in discrediting the system of divorce which had been permitted by God to the Israelites, was at any rate leading up to the estate of matrimony as Christians should receive it; an estate in which baptized persons would have a special assistance of the Divine grace. To find in the words the actual institution of a sacrament does, however, seem a somewhat violent interpretation. It is in truth an interpretation only intelligible as required to support the foregone conclusion that there must be somewhere a point of institution by our Lord, which is obvious to man.

That our Lord may have taught about this sacred union when after His Resurrection He spoke of the things pertaining to the kingdom of God is, no doubt, highly probable. That "kingdom of God" is commonly understood of the Church on earth, which our Lord was instructing the Apostles to follow Him in founding; and if Christian marriage is the copy of Christ's union with His Church, some reference to it during the great forty days seems entirely suitable. But it is needless to say that there is here no ground of proof.

We conclude therefore that if the definition of a Christian sacrament is to exclude any ordinance which cannot be proved to have been instituted "by Christ Himself," or "by Christ our Lord in the Gospel," it is not in these senses possible to prove that Christian marriage has the sacramental character.

4. *The Sacraments of the English Homily.*

Next to be noticed is the remarkable definition of the word *Sacrament*, which is given in the English Church Homily "of Common Prayer and Sacraments." Sacraments, according to the "exact signification" of the word, are "visible signs expressly commanded in the New Testament, whereunto is annexed the promise of free forgiveness of our sins, and of our holiness and joining in Christ." It would probably not be contended by any that Christian marriage is a sacrament in this sense. The Homily goes on to admit the legitimate use of the word sacrament with the widest of meanings: "But in a general acception the name of a sacrament may be attributed to anything whereby an holy thing is signified."

(5) *The outward and visible sign of an inward and spiritual grace.*

There remains the view that a Christian sacrament is sufficiently defined by the phrase "the outward and visible sign of an inward and spiritual grace," where *grace* is understood to be the grace of the Holy Spirit as accorded to Christians. Marriage may or may not have been instituted as a sacrament by Christ Himself; but it is still sacramental in its character if, corresponding with an outward and visible sign, there is found an inward and spiritual grace. It may be broadly said to be the doctrine of all the historic churches of Christendom that in Christian marriage there is such an inward grace coupled with an outward sign. It is disputed whether the outward sign is to be looked for in the contract, in the copula, in the benediction, or in any combination of these; and there is also a difficult question as to wherein consists the inward grace; but the historic churches may be said to be so far agreed that they recognize in marriage an inward grace connected with an outward sign.

Dismissing the enquiry as it affects the word "sacrament," it is clear that the real question at issue between those disputants who assert, and those who deny, the sacramental character of Christian marriage is the question whether grace is conferred in connection with the ordinance or not. This is a question of vital importance. It is in fact in another form the question,

Is grace
conferred
in con-
nexion with
Christian
marriage?

Is the marriage of Christians in its essential character identical with the marriage of non-Christians, or has it a supernatural character, resulting from the grace of the Holy Spirit, which is not shared with it by non-Christian marriage?

Recapitulation of the three characters of marriage as found in history.

In endeavouring to answer this question it may be of service to recall the characters of the Divine institution of marriage as we find it in history (1) in the state of innocence and (2) after the fall and outside Christianity. The institution is fundamentally the same alike in these two stages, and in Christian marriage; but its character is impressed in markedly different ways by the state or condition of the persons who are the subjects of marriage.

(1) In the state of innocence the Divine institution of marriage was as yet unsoiled and free from degradation. It found place in subjects who differed from fallen man in being sinless, and who therefore brought the Divine institution of marriage into no unworthy setting. But the subjects of marriage in the state of innocence were so far less favoured than Christians in that they were not members of Christ, nor were their bodies temples of the Holy Ghost. The Catholic theology teaches that they were favoured with the Divine assistance, but that this assistance was not given as it is given to Christians by the indwelling of the Spirit. Possibly, as the Scotist theology teaches, GOD would have been incarnate, and men would have been members of Christ, and temples of the Holy Ghost, even though sin had not come into the world. But, however this may be, Adam and Eve in the state of innocence were not members of Christ, or temples of the Holy Ghost.

(2) After the Fall the institution of marriage was still fundamentally the same; but its character was altered, and it became variously degraded in consequence of the sinful condition of the man and woman who were the subjects of it. They no longer possessed the innocence of Eden, and they did not yet possess the indwelling Spirit of the restored. Consequently the subjects of marriage were never at one with GOD, but at best were but awaiting their redemption, their actual state being the state of alienation; in which the

Divine institution of marriage could never have its perfect working.

(3) In the Christian Church the Divine institution still remains fundamentally the same, but a change has come over the subjects of it, giving it in consequence a new and altered character. The Christian man and the Christian woman are each made by baptism "a member of Christ, the child of God, and an inheritor of the kingdom of heaven." Body as well as soul is holy, and in the body of each the Holy Spirit makes His dwelling. The state of alienation has passed away, and notwithstanding the evil tendencies of the fallen nature which has been inherited, the restored servants of God have an inherent holiness which renders them as different from the unrestored as light from darkness. It is this difference in the subjects of Christian marriage which makes Christian marriage to be what it is. The gift of the state of grace and of peace with God at once requires that all the original demands of the Divine institution be complied with, lest that state of grace be forfeited. Hence Christian marriage becomes at once, like the marriage of the state of innocence, a marriage both indissoluble and exclusively faithful. But Christian marriage, although reverting to the original requirements of marriage in the state of innocence, rises above that marriage in the highly favoured status of the man and woman who are its subjects. These being members of Christ, and temples of the Holy Spirit, when they are united in marriage not merely remain each blessed by the Spirit as before the marriage, but the grace of the indwelling Spirit, working through the Divine institution of marriage, makes the marriage union to be a deeper, more intense, more mysterious interpenetration of being than it had been even in Paradise. If marriage is a copy of the union of Christ with His Church, it may be said that it first rises to the fulness of meaning which that high pattern implies in the persons of the members of Christ's Church. Thus marriage acquires a new character in the Christian which is not to be found either (1) in the marriage of Paradise, or (2) in that of the fallen and unrestored. It is due to the conferring of Divine grace, and that grace is

conferred in the bringing of two members of Christ into the Divine institution of marriage. Thus the grace of Christian marriage may be said to be the abiding grace of baptism, passed into the mould of the Divine institution of matrimony. What is new would seem to be not so much the bestowal of grace from a fresh and independent source, or by a fresh and independent channel, as the development of the indwelling grace of the baptized in the Divinely ordered estate of marriage now newly undertaken by the persons. The original mystery or sacrament of Paradise is in them transfigured by the Holy Spirit into a Christian sacrament.

The grace of Christian marriage is the abiding grace of baptism, passed into the mould of the Divine institution of marriage.

If then we understand that the abiding grace of baptism, passed into the mould of God's institution of marriage, gives to marriage its special character of Christian marriage, rendering it in a true sense a Christian sacrament, there appears to be no need to seek farther for some new grace of marriage derived from an external source, as, for example, from the priestly benediction. As has been seen, no form of external solemnization has been held in the Christian Church to be essential to the constitution of a perfect Christian marriage. If then no form of solemnization is essential, it is not from the solemnization that the grace of Christian marriage can be derived. The institution finds its essential characteristics in (1) the consent and (2) the copula, while (3) the condition of the baptized Christian brings to it what is necessary to transfigure the original ordinance into the Christian sacrament. Thus it is that for Christian marriage (1) baptism, (2) consent, and (3) the copula are the essential conditions.

The individual may look for a *χάρισμα*.

While, however, the grace of Christian marriage appears to be thus sufficiently indicated, it is certain that individual Christians called by God to the marriage state may look for a *χάρισμα* or gift of grace to enable them to live up to the requirements of their calling. S. Paul says, "For I would that all men were even as I myself. But every man hath his proper gift (*χάρισμα*) of God, one after this manner, and another after that." A gift of God for the right abiding in the married state must be an abiding gift, a blessed *habitus* of the soul which each individual Christian called to marriage may rightly seek

of God. It does not, however, appear to be, properly speaking, the grace of the sacrament, since it is entirely analogous to the grace given to the celibate to lead the celibate life. Each has "his *χάρισμα* of God, one after this manner, and another after that." In each case the *χάρισμα* is not the grace of the state, but the special gift of God to the individual soul for the right abiding in the state to which he is individually called.

The great difficulty of the teaching which sees a Christian sacrament in the marriage of the baptized is found in the terrible contrast between the actual spiritual condition of the unworthy Christian and the holiness which baptism should imply. It is, however, no new difficulty peculiar to the Catholic teaching of marriage, and those who find in it a stumbling-block should rather address themselves to the theology of baptism. Baptism, over and above those gifts of personal holiness which sin may wipe away, implants a certain character which no unworthiness can remove. It is a character which adds condemnation to the unworthy subject of it, and makes him more fit for punishment than even the outer heathen. But it is a character which remains, and accordingly, however rebellious a child the man may be, he is still in a sense the child of God by virtue of his adoption in baptism. So too, while the special graces of the Holy Ghost which follow from baptism become to him in his sin additional grounds of condemnation, he cannot shake himself entirely free from the work of the Holy Ghost in the baptized. If his will consent to the "deadly sin" of fornication with full acceptance, it is the prevalent teaching of the Church of Christ that such sin unrepented of is a bar to everlasting life. S. Paul says that "they which do such things shall not inherit the kingdom of God." Yet there is a sense in which the body of the fornicator does not cease to be the member of Christ in the sinful rebellion of the will, for he can "take the members of Christ and make them the members of an harlot." There is thus implanted in baptism a certain character or impress of the covenant, which remains when personal holiness is dead, and hence it is that baptism may never be repeated, even though a penitent return from the lowest depths of sinful living. He is

Difficulty
of this
teaching
in the
lives of
unworthy
Christians.

A
character
in the
baptized
which
unworthi-
ness does
not remove.

already within the covenanted mercies of GOD, and though he needs GOD's pardon to restore him to a state of salvation, he does not need to be baptized anew, but only to "stir up the gift of GOD, which is in" him by his original baptism. "One Lord, one faith, one baptism."

The
necessity
of an out-
ward test.

Again, if there is a special grace in Christian marriage, it is clear that there must be some outward means whereby a person desiring to marry may recognise the Christian character in the intended partner. Profession as to the inward state would altogether fail in trustworthiness for the purpose of a test. Just as for the office and work of the priesthood it is necessary that the Church should be able to point to the external fact of ordination, that all men may be assured of the validity of the sacraments administered to them, so for a Christian marriage it is necessary that each of the parties should be able to assure himself or herself of the competence of the other by reference to an external fact, a fact which the Church has always found in baptism.

It must, however, be repeated that the subject of the unworthy recipients of ordinances is a wide subject which cannot be fully considered in a treatise on the special subject of Holy Matrimony. The test of Christian competence which has been required by the Church in history is the test of baptism.¹ It is asserted by none that those nominal Christians who approach a sacramental ordinance in a state of unrepented sin are likely to receive such ordinances to their souls' health; but the most sinful Christian receives certain benefits *in posse* which may become actual when he regains a state of salvation, and again the Christian partner in a state of grace who has married a Christian in a state of sin is presumably not less sanctified and sanctifying than the convert from heathenism permitted to remain with a non-Christian partner.

¹ See Chapter VIII.

CHAPTER VII

OF THE INDISSOLUBILITY OF CHRISTIAN MARRIAGE; AND OF DIVORCE

PERHAPS the most important, certainly the most difficult, of the questions which have been raised with regard to Christian marriage is the question whether under any circumstances short of death it admits the dissolution of the marriage bond. The evidence of Holy Scripture is difficult to understand, the appeal to Christian tradition is not quite uniformly answered, and from the standpoint of reason it may be conceded that there are arguments of weight on both sides. If the question were merely speculative, we might be content to leave it as we leave certain other questions as to free-will and necessity till a clearer light streams in upon the soul. But it is a characteristic feature of the great questions surrounding the marriage state that they are eminently practical questions, and that therefore they have to be answered, and to be answered as they arise. It has to be decided definitely for each of a long succession of cases whether the bond of marriage can be dissolved in its essential character or not. Farther, granted the fact of the marriage bond, the answer given in any case excludes the contrary answer in every case. If the estate of Christian marriage is dissolved in its essential character by nothing short of the death of one of the parties, then it is impossible to admit the re-marriage of one party during the lifetime of the other under whatsoever plea of aggravating circumstance. If, on the other hand, divorce from the marriage bond is admitted under any circumstances whatsoever, then in logical necessity the essentially indissoluble

Difficulty
of the
question.

Necessity
of definite
decision,
because
practically
important.

Appeal
made to
(1) Holy
Scripture;
(2) The
Church in
History;
(3) Reason.

character of Christian marriage is hopelessly surrendered. One or other answer must be given. From what has already been said in previous chapters it will have appeared that the answer which as a result of this investigation we shall feel justified in giving is the answer that marriage is indissoluble in its own essential character, and that divorce from the bond of marriage is always and in every case inadmissible. The investigation will include appeals to the three great sources of Theology, viz. (1) Holy Scripture, (2) the Church in History, and (3) Reason.

1. HOLY SCRIPTURE.

(1) S. Matt.
xix. 9.

(i.) *S. Matt.* xix. 9. The most important, as it is the most difficult, text on the subject of divorce is S. Matthew xix. 9, which with its context is here given from the Textus Receptus and from the Authorised Version :

Λέγουσιν αὐτῷ, “Τί οὖν Μωσῆς ἐνετείλατο δοῦναι βιβλίον ἀποστασίον καὶ ἀπολύσαι αὐτήν;”

Λέγει αὐτοῖς, “ὅτι Μωσῆς πρὸς τὴν σκληροκαρδίαν ὑμῶν ἐπέτρεψεν ὑμῖν ἀπολύσαι τὰς γυναῖκας ὑμῶν· ἀπ’ ἀρχῆς δὲ οὐ γέγονεν οὕτω.

Λέγω δὲ ὑμῖν ὅτι ὅς ἂν ἀπολύσῃ τὴν γυναῖκα αὐτοῦ, εἰ μὴ ἐπὶ πορνείᾳ, καὶ γαμήσῃ ἄλλην, μοιχᾶται· καὶ ὁ ἀπολυμένην γαμήσας μοιχᾶται.

7 They say unto him, Why did Moses then command to give a writing of divorcement, and to put her away?

8 He saith unto them, Moses because of the hardness of your hearts suffered you to put away your wives: but from the beginning it was not so.

9 And I say unto you, Whosoever shall put away his wife, except *it be* for fornication, and shall marry another, committeth adultery: and whoso marrieth her which is put away doth commit adultery.

If this passage is not found to admit divorce, with the right of re-marriage, it cannot be said of any other passage in the New Testament that it necessarily makes that admission. On the other hand, if this passage is understood to admit such divorce, there are other passages which may doubtless be read with it.

(a) *Difficulties of the Text.* The first difficulty to overcome is the settlement of the text. Unfortunately the text is subject to extraordinary variations. These variations we will proceed to indicate.

For the establishment of the text of any passage of the New Testament recourse is had to three different sets of documentary authorities. First are the Greek manuscripts

Evidence
available.

B. *Codex Vaticanus*, in the Vatican Library at Rome, "is perhaps the oldest vellum manuscript in existence." It is commonly assigned to the fourth century, and may be a few years older than the *Codex Sinaiticus*.

[Bibliorum Sacrorum Graecus Codex Vaticanus auspice Pio IX. Pontifice Maximo collatis studiis Caroli Vercellone Sodalis Barnabitaе et Josephi Cozza Monachi Basiliani editis. Romae, typis et impensis S. Congregationis de propaganda fide curante eq. Petro Marietti socio admin. ANNO MDCCCLXVIII. (Tomus v.)]

XHCΔΕΟΤΓΕΓΟΝΕΝΟΤΤωc
 ΛΕΓΩΔΕῖMINOCANAΠο
 ΑΥCHTHNTTNAIKAATToT
 ΠΑΡΕΚΤΟCΑΟΓΟΤΠΟΡNEI
 ΑCΠΟΙΕΙΑΤΤΗΝΜΟΙΧεT
 ΘΗΝΑΙΚΑΙΟΑΠΟΔΕΛTμε
 ΝΗΝΓΑΜΗCΑCΜΟΙΧΑΤΑΙ
 ΛΕΓΟΤCΙΝΑΤΤΩΟΙΜΑΘΗ

And I say unto you that who-
 soever shall put away his wife
 saving for the cause of fornication
 causeth her to commit adultery,
 and he who hath married a woman
 put away ΜΟΙΧΑΤΑΙ.

C. *Codex Ephraemi*, in the Royal Library of Paris, contains fragments of every part of the New Testament, and among them a fragment containing the passage under review. It probably belongs to the fifth century. It contains corrections by two subsequent hands.

[Codex Ephraemi Syri Rescriptus, sive Fragmenta Novi Testamenti e codice graeco parisiensi celeberrimo quinti ut videtur post Christum seculi eruit atque edidit Constantinus Tischendorf. Lipsiae. Sumptibus et Typis Bern. Tauchnitz jun. MDCCCXLIII.]

Pq

ΤΜΩΝ · ΑΠΑΡΧΗΣΔΕΟΤΓΕΓΟΝΕΝΟΤΤΩΣ ·
 ΛΕΓΩΔΕΤMINOTIOΣΕΑΝΑΠΟΔΤΣΗΤΗΝΓΤΝΑΙΚΑΑΤ
 ΤΟΤΜΗΕΠΠΟΡNEIA · ΚΑΙΓΑΜΗΣΗΑΛΛΗΝΠΟΙΕΙΑΤΤΗ
 ΜΟΙΧΕΤΘΗΝΑΙ ·
 ΚΑΙΟΑΠΟΔΕΛΤΜΕΝΗΝΓΑΜΩΝΜΟΙΧΑΤΑΙ · ΛΕΓΟΤΕΙΝ

And I say unto you that whosoever shall put away his wife except for fornication, and shall marry another, causeth her to commit adultery, and he who marieth a woman put away ΜΟΙΧΑΤΑΙ.

TISCHENDORF'S NOTES ON C.

(Pag. 33. Vers. 39-41.)

"Diu me exercuere notae manus tertiae. Videlicet litterae Π in
 Y
 ΠΟΙΕΙ duo ductus addidit, quo fere Π facta est. Porro super ΩΝ

in ΓΑΜΩΝ duo puncta posuit, scripsitque spatio vacuo inter ΠΟΙΕΙ versus 39 et ΓΑΜΩΝ versus 41. MYXATE (idem quod MOIXATAI)

Ξ

prae fixa nota ΑΡ. Quae omnia sic explicuerim : Prima nota significat ΥΙΕΡΒΑ et duo puncta indicant finem eorum verborum quae praetermitti volebat ; ΑΡΞΟΥ vero praeposuit verbo MYXATE quum ab hoc verbo denuo, praetermissis praetermittendis, incipiendum esset. Voluit igitur, si recte vidi, ut rem breviter repetam, omitti in lectione verba ΠΟΙΕΙ ΑΥΤΗΝ ΜΟΙΧΕΥΘΗΝΑΙ. ΚΑΙ Ο ΑΙΙΟΑΕΑΥ-ΜΕΝΗΝ ΓΑΜΗΣΑΣ. Confirmat autem conjecturam meam hoc, quod haec ipsa verba a multis testibus (etiam ab Evangelistariis) revera omittuntur."

Accordingly the third hand must be understood to read :

And I say unto you that whosoever shall put away his wife except for fornication, and shall marry another, MOIXATAI.

D. *Codex Bezae*, in the University Library at Cambridge. It is ascribed to the early part of the sixth century.

[Bezae Codex Cantabrigiensis, being an exact copy, in ordinary type, of the celebrated uncial Graeco-Latin manuscript of the four Gospels and Acts of the Apostles, written early in the sixth century, and presented to the University of Cambridge by Theodore Beza A.D. 1581, edited with A critical introduction, annotations, and facsimiles by Frederick H. Scrivener, M.A., Rector of S. Gerran's, Cornwall. Cambridge, 1864.]

ρϛ:

απαρχης δε ουκ εγενετο ουτως
λεγω δε υμειν ' ος αν απολυση την γυναικα
αυτου παρεκτος λογου πορνειας
και γαμηση αλλην μοιχεται
λεγουσιν αυτω οι μαθηται αυτου

ρϛα

ab initio autem non fuit sic
dico autem vobis . quicumque dimiserit uxore
suam . excepta ratione adulterii
et duxerit aliam moechatur
dicunt ei discipuli eius

And I say unto you, Whosoever shall put away his wife, saving for the cause of fornication, and shall marry another, MOIXATAI. [The second clause wanting.]

I_d. *Codex Tischendorfianus II* (Codex Armeniacus) is one of several palimpsest fragments collected by Tischendorf. It is ascribed to the sixth century.

[Fragmenta Sacra Palimpsesta sive Fragmenta cum Novi tum Veteris Testamenti ex quinque Codicibus Graecis Palimpsestis Antiquissimis nuper in Oriente repertis &c. Ænoth. Frideric. Constantinus Tischendorf. Lipsiae, 1855.]

ΟΤΤΩC·

ΛΕΓΩΔΕΙΜΙΝ
ΟΤΙΟCΑΝΑΠΟ
ΑΤCΗΤΗΝΓΥ
ΝΑΙΚΑΑΥΤΟΤ
ΜΗΕΠΙΠΟΡΝΙΑ
ΚΑΙΓΑΜΗCΗΑΔ
ΑΗΝΜΟΙΧΑΤΑΙ
ΚΑΙΟΑΠΟΔΕΛΥ
ΜΕΝΗΝΓΑΜΩ
ΜΟΙΧΑΤΑΙ·
ΛΕΓΟΥCΙΝΑΤΤΩ

And I say unto you that whoever shall put away his wife except for fornication, and shall marry another, ΜΟΙΧΑΤΑΙ. And he who marrieth a woman put away ΜΟΙΧΑΤΑΙ.

Other
MSS.

The remaining uncial manuscripts containing the passage are of later date. Among the cursive manuscripts the majority contain the clause *καὶ γαμήσῃ ἄλλην*, and *shall marry another*. Of the more important cursives 1 (Codex Basiliensis A.N. iv. 2, at Basle) and 4 (Codex Regius 84 at Paris) agree with those uncial manuscripts which omit *καὶ γαμήσῃ ἄλλην* and *shall marry another*, and have *ποιεῖ αὐτὴν μοιχευθῆναι* *causeth her to commit adultery* in place of *μοιχᾷται*.

(2) Versions.

The Syriac Peshitto and the Old Latin are the most ancient and for our purpose the most important of the versions or translations of the New Testament into other languages. The Syriac Peshitto probably dates from the second century; and the Old Latin is commonly assigned to the same period. The principal Egyptian versions, the Memphitic and the Thebaic, or at least parts of them, may date from before the close of the second century.¹ The remaining versions are all assigned to later dates when, so far as our present enquiry is concerned,

¹ Scrivener, *Introduction to the Criticism of the New Testament*, 3rd edition, p. 371.

the Greek text itself was certainly involved in considerable variations. The versions made thus late are not therefore of much assistance in determining the original text. Such are the Ethiopic (4th cent.), the Vulgate (A.D. 383), the Armenian (5th cent.), the Gothic (4th cent.), and the later Syriac versions (508 A.D., 616 A.D.).

Syriac Versions. The following readings from the Syriac versions are due to the kindness of the well-known Syriac scholar, the Rev. G. H. Gwilliam, of Jesus College, Oxford. He says:²

“In S. Matthew xix. 9 we have

“(1) Peshitto. ‘Whosoever putteth away his wife without adultery, and taketh another, committeth adultery; and whosoever taketh the woman put away committeth adultery.’

“(2) Harclean. ‘Whosoever shall divorce the wife of him, except for fornication, and shall marry another, committeth adultery; and he who marrieth the woman put away, committeth adultery.’

“(3) Curetonian. ‘Whosoever putteth away his wife, without reason of adultery, and taketh another, surely committeth adultery towards her’ (omitting remainder of verse).”

Old Latin Versions. The Old Latin versions, with the exception of ff¹, also contain translations of the clause *καὶ γαμήσῃ ἄλλην*, and understand *μοιχᾶται* to mean *commits adultery*. On the other hand, ff¹ follows B and the other manuscripts which omit the clause *καὶ γαμήσῃ ἄλλην*, and in place of *μοιχᾶται* read *ποιεῖ αὐτὴν μοιχευθῆναι*.

Egyptian Versions. The two principal Egyptian versions are (1) the Memphitic, or Lower Egypt dialect of Coptic, and (2) the Sahidic or Thebaic, the Upper Egypt dialect of the same language.

(1) The Memphitic Version (ed. M. G. Schwartz, Lipsiae, 1846).

“And I say unto you that whosoever shall put away his wife except for fornication, causeth her *procreate*; and whosoever marrieth her which is put away doth commit adultery.”

(2) The Sahidic Version (ed. Woide, Oxford, 1799).

“And I say unto you, Whosoever shall put away his wife without ground of fornication, and shall abide with another, is an adulterer.”

² In a letter to the writer.

Thus the Memphitic version¹ omits the clause "and shall marry another," and translates evidently from *ποιεῖ αὐτὴν μοιχευθῆναι* (or *μοιχᾶσθαι*) "causeth her *procreate*." The Memphitic version also has the clause "and whoso marrieth her which is put away doth commit adultery." The Sahidic version, on the other hand, reads, "and shall marry another, committeth adultery," and there stops.

(3) *Fathers.*

As with the Versions, so with the Fathers, it is of no great service to refer to any of date later than the third century. The writers of the first three centuries who quote the passage appear to be only three—Origen, S. Clement of Alexandria, and Athenagoras.

ORIGEN.

Commentary on S. Matthew.

Τάχα δὲ τῶν τολμώντων τις Ἰουδαῖκος ἀνὴρ ἐναντιοῦσθαι τῇ τοῦ Σωτῆρος ἡμῶν διδασκαλίᾳ, φήσκει, ὅτι καὶ ὁ Ἰησοῦς, εἰπὼν· Ὅς ἂν ἀπολύσῃ τὴν γυναῖκα αὐτοῦ παρεκτὸς λόγου πορνείας, ποιεῖ αὐτὴν μοιχευθῆναι . . .

(The text is cited in the same words three times.)

S. CLEMENT OF ALEXANDRIA.

Stromata, lib. ii. cap. 23.²

Ὁ δὲ ἀπολελυμένην λαμβάνων γυναῖκα μοιχᾶται, φησὶν· ἐὰν γάρ τις ἀπολύσῃ γυναῖκα, μοιχᾶται αὐτὴν, τουτέστιν, ἀναγκάζει μοιχευθῆναι.

lib. iii. cap. 6.³

Τί δὲ ἐστὶν ὅπερ ὁ κύριος εἶπε πρὸς τοὺς περὶ τοῦ ἀποστασίου πυνθανομένους, Εἰ ἔξεστιν ἀπολύσαι γυναῖκα, Μωϋσέως ἐπιτρέψαντος. Πρὸς τὴν σκληροκαρδίαν ὑμῶν, φησὶν, ὁ Μωϋσῆς ταῦτα ἔγραψεν· ὑμεῖς δὲ οὐκ ἀνέγνωτε, ὅτι τῷ πρωτοπλάστῳ ὁ Θεὸς εἶπεν "Ἐσεσθε οἱ δύο εἰς σάρκα μίαν. Ὡστε ὁ ἀπολύων τὴν γυναῖκα χωρὶς λόγου πορνείας ποιεῖ αὐτὴν μοιχευθῆναι.

ATHENAGORAS.

Legatio pro Christianis, § 33.⁴

Ὅς γὰρ ἂν ἀπολύσῃ, φησὶ, τὴν γυναῖκα αὐτοῦ, καὶ γαμήσῃ ἄλλην, μοιχᾶται· οὔτε ἀπολύειν ἐπιτρέπων ἥς ἔπαυσέ τις τὴν παρθενίαν, οὔτε ἐπιγαμεῖν.

¹ At least in the MSS. employed by Schwartz.

² Migne's Ed. pp. 1096, 1097.

³ *Ibid.* p. 1150.

⁴ *Ibid.* p. 365.

Origen (A.D. 185–251), in his commentary on S. Matthew, Origen.
 ch. xix., quotes v. 9 no less than three times in exactly the same words, which may thus be reasonably taken to represent the manuscript which he used. He reads: ὅς ἂν ἀπολύσῃ τὴν γυναῖκα αὐτοῦ παρεκτὸς λόγου πορνείας, ποιεῖ αὐτὴν μοιχευθῆναι. Thus he omits the clause *and shall marry another*, and employs the reading of B, *causeth her to commit adultery*. He appears to know nothing of the after clause, *and whoso marrieth her which is put away doth commit adultery*.

S. Clement of Alexandria (at the catechetical school, A.D. S. Clement
of
Alexandria 190–203) does not quote the passage, as Origen does, in the course of a commentary, but in his *Miscellanies* (Stromata). He transposes the parts of the verse, quoting the second part of the verse in his argument, and then going on to cite the first part as his authority for it. He writes: Ὁ δὲ ἀπολελυμένην λαμβάνων γυναῖκα μοιχᾷται, φησὶν· ἐὰν γάρ τις ἀπολύσῃ γυναῖκα, μοιχᾷται αὐτὴν, τουτέστιν, ἀναγκάζει μοιχευθῆναι. “‘He that receiveth a woman put away, committeth adultery,’ saith He. For, ‘if one put away his wife, he maketh her an adulteress,’ that is, compelleth her to commit adultery.” S. Clement may probably be quoting freely and from memory; and it is necessary to enquire from which of the three verses, (1) S. Matthew v. 32, (2) S. Matthew xix. 9, (3) S. Luke xvi. 18, he is quoting.

The words do not correspond with S. Luke xvi. 18, which reads ὁ ἀπολύων, uses the word μοιχεύει, and retains the clause γαμῶν ἑτέραν. They do not correspond with S. Matthew v. 32, which reads not μοιχᾷται, but ποιεῖ αὐτὴν μοιχᾶσθαι. They do correspond with S. Matthew xix. 9, as far as they go, but have neither of the two clauses *except for fornication*, and *and shall marry another*. It may be said to be fairly certain on the whole that S. Clement is quoting S. Matthew xix. 9. He reads μοιχᾷται, but understands it as μοιχᾷται αὐτὴν, *causeth her to commit adultery*. This interpretation is strong evidence that his text did not have the words *and shall marry another*, which are redundant to the sense; whether the clause *except for fornication* was also missing from S. Clement’s text, or merely omitted in a not too exact quotation, can hardly be decided.

In considering the question of S. Clement's text it should not, however, be overlooked that in the next book (*lib.* iii.) of his *Miscellanies* he makes another loose reference which appears to refer to S. Matthew xix. The whole passage is at once abridged and paraphrased. He on this occasion employs the phrase *ποιεῖ αὐτὴν μοιχευθῆναι*. If this be taken as a quotation, it would seem that S. Clement was familiar with both the readings in dispute.

Athena-
goras.

Athenagoras (c. 177 A.D.) has the word *μοιχᾶται*, and the clause *and shall marry another*, but does not cite the clause *except for fornication*.

Tabular
statement.

The whole of the documentary evidence which may be considered of value for the determination of the true reading of S. Matthew xix. 9 has now been passed in review. The tabular statement which follows will assist the reader to appreciate it.

	1		2		3		4
	μὴ ἐπὶ πορνείᾳ.		καὶ γαμήσιον ἔσθην.		πολεῖ αὐτὴν μοιχεύθῃναι.		καὶ ὁ ἀπολελυμένην γαμήσας μοιχεύεται.
	Retain.	Omit.	Retain.	Omit.	μοιχεύεται.	πολεῖ αὐτὴν μοιχευθήναι.	Retain.
MANUSCRIPTS .	N		N		N		N
	B (παρεκτός λόγου πορνείας).		C	B	C		C
	C ³		C ³		D		D
	D (παρεκτός λόγου πορνείας).		I _a		I _a		I _a
VERSIONS . .	All Syriac vv.		All Syriac. Most Old Latin. Sahidic.	ff ¹	All Syriac. Most Old Latin. Sahidic.	ff ¹	Syriac Peshitto. Syriac Harclean. Memphitic.
							Syriac Curetonian.
FATHERS . .	(S. Clem. Alex. in <i>Strom.</i> iii. 6. If quoting this passage, he quotes very freely, <i>χώρας λόγου πορνείας</i> .)	S. Clem. Alex. in <i>Strom.</i> ii. 23.		Origen <i>in loco</i> 3 times.	S. Clem. Alex. in <i>Strom.</i> ii. 23.	[S. Clem. Alex. in <i>Strom.</i> iii. 6.]	Origen <i>in loco</i> 3 times.
	Origen <i>in loco</i> 3 times, <i>παρεκτός λόγου πορνείας</i> .	Athenagoras, <i>Leg.</i> 33.	Athenagoras, <i>Leg.</i> 33.	S. Clem. Alex.			Not quoted by Athenagoras or S. Clement.

(β) *Internal Evidence.* It would appear to follow that where the documentary evidence is so divided, the only conclusion which can be drawn is that no certainty as to the true text is now available, and that accordingly for purposes of doctrine it is undesirable to make use of the passage. This practical conclusion will, in fact, be here adopted. It may, however, be worth while to ask whether any theory can explain the remarkable diversity of readings which we find. The following explanation is suggested. Let it be supposed that the text commonly current in the third century, whether the original text or not, ran thus:

Suggested
text.

λέγω δὲ ὑμῖν, ὃς ἂν ἀπολύσῃ τὴν γυναῖκα αὐτοῦ μὴ ἐπὶ πορνείᾳ
μοιχᾶται.

And I say unto you, Whosoever shall put away his wife, except it be for fornication, μοιχᾶται, and that the passage thus ended. The word μοιχᾶται in this passage is of obscure signification. One probable meaning would perhaps be the meaning which the word has when taken as a reflexive middle, adulterously pollutes himself, commits adultery; and this is certainly the force of the word in certain passages of the Septuagint, and probably its force in some passages of the New Testament. Another meaning is the meaning which commended itself to S. Clement of Alexandria, who takes the word as a causative. S. Clement says, μοιχᾶται αὐτήν, τοῦτ' ἔστιν, ἀναγκάζει μοιχευθῆναι (μοιχᾶται her, that is, he compels her to commit adultery). In neither sense is the word satisfactorily clear in the passage as conjecturally given above. If the reflexive middle commits adultery gives the meaning, why, it would naturally be asked, does the commission of adultery result? It clearly does not result unless the man form a connexion with another woman. On the other hand, if μοιχᾶται is to be read, with S. Clement, in a directly causative sense with the wife for its object, the text seems to need αὐτήν, or some word of similar indication to make it clear. There would therefore be every inducement to supply explanation by means of glosses in the margin; the best of all glosses being parallel passages from the Gospels themselves. Now there are

two passages which at once present themselves for such a purpose. There is first the passage S. Matthew v. 32:

ἐγὼ δὲ λέγω ὑμῖν ὅτι πᾶς ὁ ἀπολύων
τὴν γυναῖκα αὐτοῦ παρεκτὸς λόγου πορνείας
μοιχᾶσθαι }
ποιεῖ αὐτὴν μοιχευθῆναι } καὶ ὁς ἐὰν
ἀπολελυμένην γαμήσῃ μοιχᾶται.

But I say unto you, That whosoever shall put away his wife, saving for the cause of fornication, causeth her to commit adultery; and whosoever shall marry her that is divorced committeth adultery.

The other passage is S. Luke xvi. 18:

πᾶς ὁ ἀπολύων τὴν γυναῖκα αὐτοῦ καὶ
γαμῶν ἑτέραν μοιχεύει· καὶ πᾶς ὁ
ἀπολελυμένην ἀπὸ ἀνδρὸς γαμῶν μοιχεύει.

Whosoever putteth away his wife, and marrieth another, committeth adultery; and whosoever marrieth her that is put away from *her* husband committeth adultery.

Those scribes who understood μοιχᾶται in the reflexive middle sense, *commits adultery*, would quote the latter passage, with its καὶ γαμῶν ἑτέραν, and *marrieth another*, as explaining how it came about that the man would commit adultery; while they might or might not go on to complete the reference by quoting the clause, and *whosoever marrieth her that is put away from her husband committeth adultery*.

A later scribe, incorporating these glosses into the text in such a way as to preserve the grammatical unities, and assimilate the words employed to their new context, would give us very much what we have in the Textus Receptus.

Enquiring now whether the authorities which have the passage καὶ γαμήσῃ ἄλλην, and *shall marry another*, are the same with those which have μοιχᾶται, we have the following results:

	AUTHORITIES WHICH READ καὶ γαμήσῃ ἄλλην.	AUTHORITIES WHICH READ μοιχᾶται.
MSS.	Σ C C ³ D I _d	Σ C ³ D I _d
VV.	All Syriac, most Old Latin, Sahidic.	All Syriac, most Old Latin, Sahidic.
Fathers	Athenagoras.	Athenagoras, S. Clement Alex.

It thus appears that, speaking generally, the authorities which retain μοιχᾶται explain it by καὶ γαμήσῃ ἄλλην.

If, however, *μοιχᾶται* be taken in a causative sense, the gloss employed would naturally be S. Matthew v. 32: *πᾶς ὁ ἀπολύων τὴν γυναῖκα αὐτοῦ παρεκτὸς λόγου πορνείας ποιεῖ αὐτὴν μοιχευθῆναι*, *Whosoever shall put away his wife, saving for the cause of fornication, causeth her to commit adultery*. Later scribes incorporating the glosses would some of them substitute *ποιεῖ αὐτὴν μοιχευθῆναι*, *causeth her to commit adultery*, for *μοιχᾶται*, as more obviously intelligible; while others would embody the whole six words, *παρεκτὸς λόγου πορνείας ποιεῖ αὐτὴν μοιχευθῆναι*, *saving for the cause of fornication, causeth her to commit adultery*, omitting the *μὴ ἐπὶ πορνείᾳ*, *except for fornication*, of the original text, as well as the *μοιχᾶται*. These scribes again might or might not adopt the later clause, *καὶ ὃς ἐὰν ἀπολελυμένην γαμήσῃ μοιχᾶται*, *and whosoever shall marry her that is divorced μοιχᾶται*.

If we now ask whether the authorities which omit *καὶ γαμήσῃ ἄλλην*, *and shall marry another*, are in fact the same which have *ποιεῖ αὐτὴν μοιχευθῆναι*, *causeth her to commit adultery*, we have the following results:

	AUTHORITIES WHICH OMIT <i>καὶ γαμήσῃ ἄλλην.</i>	AUTHORITIES WHICH READ <i>ποιεῖ αὐτὴν μοιχευθῆναι.</i>
MSS.	B	B C
VV.	ff ¹ , Memphitic.	ff ¹ , Memphitic.
Fathers	Origen (3 times), [S. Clement of Alex. in <i>Strom.</i> ii. 23].	Origen (3 times), [S. Clem. Alex. in <i>Strom.</i> iii. 6].

Again the authorities are practically the same.

The text suggested above is not therefore of the more general type of either of the two groups of manuscripts, for it omits *καὶ γαμήσῃ ἄλλην*, *and shall marry another*, while it retains *μοιχᾶται*. It is not however a conjectural text in the sense in which the word *conjectural* is technically used. Not only is there high manuscript authority at once for every word retained and for every omission made, but it appears fairly certain that the retention of *μοιχᾶται* along with the omission of *καὶ γαμήσῃ ἄλλην* characterized at least one of the manuscripts made use of by S. Clement of Alexandria.

The text suggested may next be subjected to the recognised canons of Internal Evidence. These have been collected by Scrivener under seven heads.

This text
subjected
to the
canons of
Internal
Evidence.

1. *Proclivi Scriptioni præstat ardua*—the more difficult the reading, the more likely it is to be genuine. The reading suggested is difficult because the word *μοιχᾶται* remains unexplained; and the word *μοιχᾶται* is known to have presented such difficulty in ancient times to readers whose vernacular was Greek, that one group understood it to mean *commits adultery*, while at least S. Clement of Alexandria understood it to mean *causes to commit adultery*. The reading therefore has in its favour the preference due to the more difficult reading.

2. "That reading out of several is preferable, from which all the rest may have been derived, although it could not be derived from any of them." How existing readings might take their rise from the reading suggested has been indicated, and there is evidently no facility for the reverse process.

3. "*Brevior lectio, nisi testium vetustorum et gravium auctoritate penitus destituatur, præferenda est verbosiori. Librarii enim multo proniores ad addendum fuerunt, quam ad omittendum.*"¹ "The shorter reading is to be preferred to the more wordy, unless it be altogether wanting in the authority of ancient and weighty witnesses. For copyists have been much more prone to add than to omit." In the present case the suggested reading is the shortest.

4. "That reading of a passage is preferable which best suits the peculiar style, manner, and habits of thought of an author, it being the tendency of copyists to overlook the idiosyncracies of the writer."

Under this head may be brought the fact which appeared of so much importance to Keble, that S. Matthew's gospel was a gospel for the Jews, and is recording here the answer to a question made specially by Jews. The question concerned putting away a wife, and did not concern marrying another; it presumably concerned a polygamist in his putting away of a wife as much as a monogamist in like case, and thus excluded

¹ Griesbach N.T. *Proleg.* p. lxiv. vol. i.

the idea of adultery on the part of the man. It was in fact only concerned with divorce by the man, and not at all with the question of other relations possible to him. If therefore the answer simply replied to the question which S. Matthew's Gospel records, the phrase *καὶ γαμήσῃ ἄλλην*, *and shall marry another*, is rendered so far unlikely by travelling outside the limits of the question; and any reading which, omitting this clause, could give the meaning "causes to commit adultery," or "is responsible for adultery," would be so far more natural. Doubtless, on the other hand, our Lord might have chosen to emphasize a side of truth, which His questioners so entirely overlooked.

5. "Attention must be paid to the genius and usage of each several authority, in assigning the weight due to it in a particular instance. Thus the testimony of Cod. B is of the less influence in omissions, that of Cod. D (Bezae) in additions, inasmuch as the tendency of the former is to abridge, that of the latter to amplify, the sacred text." Considerations of this character would in the case before us be of more value as regards the second half of the verse than the first.

6. "*Inter plures unius loci lectiones, ea pro suspecta merito habetur, quae orthodoxorum dogmatibus manifeste prae ceteris favet.*" This canon, taken from Griesbach, receives little favour from Scrivener, and will receive as little from all those who look for the guidance of the Holy Spirit in the history of the Church. Such as it is, it would tell against our hypothetical reading, for, as we shall presently see, remarriage after divorce found no favour with the Church of the first three centuries.

7. "'Apparent probabilities of erroneous transcription, permutation of letters, itacism and so forth,' have been described by Bp. Ellicott 'paradiplomatic evidence,' as distinguished from the 'diplomatic' testimony of codices, versions, &c."

Under this head may be noticed the recurrence, as in the Textus Receptus, of the word *μοιχᾶται*. The omission of the second part of the verse may thus be due to a copyist's error; but the various readings of the whole passage point rather to the interpolation of the words in some manuscripts by way

of gloss, than to their omission in others by an error of the copyist.

Summing up the results of this examination of the Internal Evidence, it will be seen that the reading suggested satisfies all the more important canons of such evidence.

It thus appears that a fairly strong case can be made out to shew that the original reading from which all existing readings were derived was a reading which may not contemplate remarriage after divorce; it is certain that some MSS. of high authority have readings which do not contemplate any such remarriage; and it is further certain that the text is so variously read as to make it in the highest degree inexpedient to base any argument of important bearing upon any of its readings. The proper course appears to be to put aside S. Matt. xix. 9, and to direct the enquiry to (1) other passages of Holy Scripture, (2) the testimony of the Church in history, and (3) the necessary conclusions of Reason.

Conclusion.
Text too
uncertain
for employ-
ment in
argument.

(b) *Explanations which have been given of the TEXTUS RECEPTUS.*

Before, however, proceeding to thus direct our enquiry, it will be well to pause and notice the explanations which are commonly given of the verse, supposing the reading of the Textus Receptus and of the Authorized Version to be the right one. If minor comments be disregarded, the explanations of the verse may be said to be mainly three, which may be called (a) Keble's, (β) von Döllinger's, and (γ) the Concession views.

(a) *Keble's view.* Keble lays much stress on the fact that the words were addressed by our Lord not to His own followers, but to the Jews. He was teaching the "multitudes," and while so teaching them was approached by the Pharisees, who asked which of two views concerning the scope of the Mosaic concession of divorce was the correct one. "Our Lord then might be very well understood to be giving His warrant to one of two interpretations, both which had more or less of Rabbinical authority."¹ According to this view, then, our Lord's words were simply an interpretation of the Mosaic concession, and only concerned the Jews. When addressing His own disciples

¹ Keble. *An Argument against immediately repealing the laws which treat the Nuptial Bond as indissoluble.* 2nd. ed. 1867 p. 15.

He admitted no such concessions as available for them. And in interpreting the Mosaic provision our Lord distinctly pointed out that even that was "entirely relative to their *σκληροκαρδία*; i.e. (taking the phrase literally) to the impossibility of making an impression upon them. From which it would follow that in any Divine Economy, which provided an effectual remedy for that *σκληροκαρδία*, the permission to divorce would wholly cease, and the Law return to what it had been in the beginning." ¹

Keble admits that "the real difficulty of this argument lies in the seeming want of ancient consent." ²

(β) *Von Döllinger's View.* Von Döllinger, while apparently understanding our Lord's words to refer not merely to the Jews, but to Christians also, is of opinion that the one conceded ground of divorce, *πορνεία*, has no reference to adultery or post-nuptial sin, but must be understood to be confined to pre-nuptial unchastity.

"*Πορνεία* always means incontinence in the unmarried, never, whether in the New Testament, or the Septuagint, or in profane authors, adultery. Thus *πορνεία* and *μοιχεία* are always distinguished, as in Matt. xv. 19; Mark vii. 21; and the adulteress in John viii. 3 is called *ἐν μοιχείᾳ κατειλημμένην*. There is no ground for making *πορνεία* a general term including adultery; when more than simple fornication is meant, either *μοιχεία* or *ἀκαθαρσία* is used with it, as in Mark vii. 21; 2 Cor. xii. 21; Gal. v. 19; Eph. v. 3; Col. iii. 5; Heb. xiii. 4. And Meyer, in proof of his view that *πορνεία* in Matt. v. 32 means adultery, can only cite two passages, John viii. 41, and 1 Cor. v. 1. In the former the Jews say, 'We be not born of fornication, we have one Father, even God'; in the latter Paul calls the cohabiting of a man with his father's widow *πορνεία*, for there is no Greek word for incest, so he could only call a connexion which was no true marriage *πορνεία*. Both passages are further evidence that *πορνεία* is *not* adultery. So in the New Testament, both Hebrew and Septuagint, *πορνεία* (Heb. *senut* or *tasnut*) and *μοιχεία* (Heb. *naphuph*) are always distinguished; the last is never used of the unmarried, or the first of a wife. The one exception (Amos vii. 17) confirms the rule, for it says, 'Thy wife shall be violated (*πορνεύσει*)

¹ Keble, *An Argument*, &c. p. 13.

² *Ibid.* p. 29.

in the city,' *i.e.* by force, which is not adultery.¹ Both words are put together in Ecclus. xxiii. 23, ἐν πορνείᾳ ἐμοιχείθῃ, for emphasis.² Kuinöl and others quote, besides Amos, Hosea iii. 3, where it is said of a wife called μοίχαλις before, καὶ οὐ μὴ πορνεύσῃς, but it is added, 'Thou shalt not be any man's.'³ The woman was bought by the prophet as a slave, as a type of Israel; he does not marry her; she is his property, not his wife; meanwhile, she is to be continent, and πορνεύσῃς is properly used. The Greeks always urge that πορνεία expressly excludes adultery, and is only used of the unmarried. So Gregory of Nyssa says, πορνεία ἐστὶ καὶ λέγεται ἡ χωρὶς ἀδικίας ἑτέρου γενομένη τῶν ἐπιθυμίας ἐκπλήρωσις,⁴ and Balsamon (p. 1048) πορνεία λέγεται ἡ χωρὶς ἀδικίας ἑτέρου μίξις, ἡ γοὺν ἡ πρὸς ἐλευθέραν ἀνδρὸς γυναῖκα. Only in Greek, as in all languages, πορνεία and πορνεύω are used of a wife who has become a common prostitute. Thus Dio Cassius (60, 31) says of Messalina, ὥσπερ οὐκ ἐξαρκοῦν οἱ ὅτι καὶ ἐμοιχείετο καὶ ἐπορνεύετο, for she actually did both; she contracted adulterous ties, and she went to a regular house of ill fame. So Clement of Alexandria, when showing the analogy between fornication and idolatry, says of this sort of prostitution, ὡς εἰδωλολατρεία ἐκ τοῦ ἑνὸς εἰς τοὺς πολλοὺς ἐπινέμησις ἐστὶ θεοῦ, οὕτως ἡ πορνεία ἐκ τοῦ ἑνὸς γαμοῦ εἰς τοὺς πολλοὺς ἐστὶν ἔκπτωσις,⁵ where the comparison obliged him to give up the common meaning of πορνεία. Tholuck says πορνεία is used for μοιχεία in the Itala and by Ulfilas, but he is wrong. See Sabatier's Edition of the Vetus Itala, which reads, *exempta causa fornicationis*, and so most manuscripts read as well as S. Jerome and S. Augustine, who appeals to the agreement of those he knew.⁶ Only two manuscripts of the Itala (Codd. Clarom. and Cantab.) render *adulterium* as Tertullian did before, and after him Zeno of Verona.

"But supposing πορνεία could be used for *adulterium*, that does not explain why Christ or S. Matthew should have used the word,

¹ Both the authorized and revised English versions read: "Thy wife shall be an harlot in the city."

² Authorized Version: "She hath played the whore in adultery."

³ Authorized Version: "Thou shalt not play the harlot, and thou shalt not be for another man."

Revised Version: "Thou shalt not play the harlot, and thou shalt not be any man's wife."

[4] Greg. Nyss. *Ep. Can.* tom. ii. p. 118.

[5] Clem. *Stromata*, iii. p. 552, Ed. Potter.

[6] S. Aug. *De Conjugiis Adulterinis*.

when it was essential to define accurately the one ground for dissolution of marriage. Christ more than once uses *μοιχεία* here; what should have induced Him suddenly to change the word for 'fornication,' if, as our opponents maintain, He meant adultery, and that only? Most prefer to pass over this difficulty in silence. De Wette, Gerlach, and Weiss say that it is because *μοιχᾶσθαι* is used in the same passage in a wider sense for the remarriage of a divorced wife. But that contradicts the obvious meaning of Christ. He calls marrying a second wife or a divorced wife most strictly and properly *adultery*; and it is the right term, if marriage be indissoluble. The connection of a married man with another woman, or of a single man with a married woman, is then, not in a wider and improper, but in the strictest and most proper sense, *μοιχεία*."¹

In reply to the argument of the great German theologian it may be urged, first, that the one ground of divorce thus alleged to be sanctioned, viz., pre-nuptial unchastity, has never been recognised as a ground of divorce by the Christian Church;² and next, that careful examination of the early Christian writers shews conclusively that they held *πορνεία* in this and the cognate passages to mean adultery.³

(γ) *The Concession View.* That view may be so called which understands our Lord to concede to Christians the right of (1) divorce for adultery, coupled with (2) the right of remarriage after such divorce. If Keble's view be rejected, and the words of S. Matthew xix. 9 be held to apply to Christians; and if also von Döllinger's view be rejected, the word *πορνεία* being taken to signify adultery or post-nuptial sin, the view that our Lord permits to Christians the rights of divorce for adultery and of remarriage after divorce seems a natural one. That Christians may divorce for adultery, in the sense of claiming separation of life, is indeed the continuous teaching of all Christian tradition; it is on the point of remarriage that the difficulty arises. If, however, the reading of the Textus

¹ Von Döllinger, *The First Age of the Church*, English Translation, Appendix.

² In the Eastern Churches unchastity in the woman after the solemn betrothal is a ground of divorce. See Zhishman, p. 737. The development after marriage of pregnancy resulting from pre-nuptial unchastity is also admitted in the East as a ground of divorce. Zhishman, p. 737.

³ See p. 221.

Receptus be the right one, and the views of Keble and von Döllinger be alike rejected, it does seem to follow that a man who divorces his wife for adultery on her part, and then marries another woman, is not, by so doing, himself guilty of adultery.

But if this result follow from a natural interpretation of the first half of the verse, what is to be made of the second half—‘Ο ἀπολελυμένην γαμήσας μοιχᾶται, “He that marrieth a woman put away committeth adultery”? If this refer, as it has been commonly held to refer, to all divorced wives, not less those put away for adultery than their less guilty sisters, how can it be said that such divorced adulteresses commit adultery by remarriage, if their former husbands have been able to remarry without the commission of adultery? Adultery, as Tertullian says, “is a crime incident to the marriage state”; and if it be possible in either partner, it must be because the bond of the marriage continues, and if this bond continue, then both are bound. Accordingly Alford¹ and some others hold that the word ἀπολελυμένην in the second half of the verse must be held not to include the divorced adulteress, who must be understood to have liberty to remarry. That the word is not confined to the adulteress appears to be clear from the absence of the article (we should expect τὴν ἀπολελυμένην); but that the adulteress is to be excluded from its scope is merely a conjecture to support a foregone conclusion. It receives no support from Christian antiquity. It may be added that this difficulty remains, even if the second half of the verse be rejected. The similar teaching of S. Matthew v. 32 and of S. Luke xvi. 18 has to be met.

Passing by these three explanations, and reverting to the conclusion that the text of the passage is so corrupt that it cannot reasonably be depended on to establish any theory, we have next to notice the remaining passages of Holy Scripture which bear upon the subject of divorce and remarriage as possible to Christians. First must be cited the three remaining utterances of our Lord, which are preserved in the Gospels.

¹ *In loco.*

(ii.) *S. Matthew* v. 31, 32:

31 Ἐρρέθη δὲ, ὅτι ὃς ἂν ἀπολύσῃ τὴν γυναῖκα αὐτοῦ, δότω αὐτῇ ἀποστάσιον.

32 Ἐγὼ δὲ λέγω ὑμῖν, ὅτι ὃς ἂν ἀπολύσῃ τὴν γυναῖκα αὐτοῦ παρεκτὸς λόγου πορνείας, ποιῇ αὐτὴν μοιχᾶσθαι· καὶ ὃς ἐὰν ἀπολελυμένην γαμήσῃ, μοιχᾶται.

31 It hath been said, Whosoever shall put away his wife, let him give her a writing of divorcement.

32 But I say unto you, That whosoever shall put away his wife, saving for the cause of fornication, causeth her to commit adultery: and whosoever shall marry her that is divorced committeth adultery.

In this passage it is implied that a man may put away his wife for *πορνεία*, but nothing is said about his marrying again. In the second half of verse 32, which asserts that "whosoever shall marry her that is divorced committeth adultery," no exception is made of the divorced adulteress. Keble notes that the Sermon on the Mount, in which these words occur, was, like *S. Matthew* xix. 9, addressed not merely to the disciples, but to a Jewish audience;¹ and he holds that, like *S. Matthew* xix. 9, it is to be regarded as an interpretation of the Mosaic provision. It is noticeable in this connexion that the remarriage of the man was by the Jews understood to be allowed, and that no question would be raised with regard to it. If however the passage be taken to express the higher morality of the Christian law, no inference favouring the remarriage of the man can be drawn from it, while the remarriage of the woman is expressly barred.

(iii.) *S. Mark* x. 2-12:

2 Καὶ προσελθόντες οἱ Φαρισαῖοι ἐπηρώτησαν αὐτόν, εἰ ἔξεστιν ἀνδρὶ γυναῖκα ἀπολύσαι, πειράζοντες αὐτόν.

3 Ὁ δὲ ἀποκριθεὶς εἶπεν αὐτοῖς, Τί ὑμῖν ἐνετείλατο Μωσῆς;

4 Οἱ δὲ εἶπον, Μωσῆς ἐπέτρεψε βιβλίον ἀποστασίου γράψαι, καὶ ἀπολύσαι.

5 Καὶ ἀποκριθεὶς ὁ Ἰησοῦς εἶπεν αὐτοῖς, Πρὸς τὴν σκληροκαρδίαν ὑμῶν ἔγραψεν ὑμῖν τὴν ἐντολὴν ταύτην·

6 Ἀπὸ δὲ ἀρχῆς κτίσεως, ἄρσεν καὶ θῆλυ ἐποίησεν αὐτοὺς ὁ Θεός.

2 And the Pharisees came to him, and asked him, Is it lawful for a man to put away *his* wife? tempting him.

3 And he answered and said unto them, What did Moses command you?

4 And they said, Moses suffered to write a bill of divorcement, and to put *her* away.

5 And Jesus answered and said unto them, For the hardness of your heart he wrote you this precept.

6 But from the beginning of the creation God made them male and female.

¹ "When Jesus had ended these sayings, the people were astonished at his doctrine, for he *taught them* as one having authority." (*S. Matt.* vii. 28, 29.)

7 Ἔνεκεν τούτου καταλείψει ἄνθρωπος
τὸν πατέρα αὐτοῦ καὶ τὴν μητέρα· καὶ προσ-
κολληθήσεται πρὸς τὴν γυναῖκα αὐτοῦ,

8 Καὶ ἔσονται οἱ δύο εἰς σάρκα μίαν.
ὥστε οὐκέτι εἰσὶ δύο, ἀλλὰ μία σὰρξ.

9 Ὁ οὖν ὁ Θεὸς συνέζευξεν, ἄνθρωπος
μὴ χωριζέτω.

10 Καὶ ἐν τῇ οἰκίᾳ πάλιν οἱ μαθηταὶ
αὐτοῦ περὶ τοῦ αὐτοῦ ἐπηρώτησαν αὐτόν.

11 Καὶ λέγει αὐτοῖς, Ὃς ἐὰν ἀπολύσῃ
τὴν γυναῖκα αὐτοῦ καὶ γαμήσῃ ἄλλην,
μοιχᾶται ἐπ' αὐτήν·

12 Καὶ ἐὰν γυνὴ ἀπολύσῃ τὸν ἄνδρα
αὐτῆς καὶ γαμηθῇ ἄλλῳ, μοιχᾶται.

7 For this cause shall a man leave
his father and mother, and cleave to
his wife ;

8 And they twain shall be one
flesh : so then they are no more
twain, but one flesh.

9 What therefore God hath joined
together, let not man put asunder.

10 And in the house his disciples
asked him again of the same *matter*.

11 And he saith unto them, Who-
soever shall put away his wife, and
marry another, committeth adultery
against her.

12 And if a woman shall put away
her husband, and be married to
another, she committeth adultery.

In this passage, which may be taken as parallel with S. Matthew xix. 3–12, the verses 2–9, generally condemning divorce, were addressed to the Pharisees ; while the explicit statements as to the adultery of persons remarrying after divorce, which are given in verses 11, 12, were addressed to the disciples “in the house.” In replying to the Pharisees, our Lord dealt only with “putting away,” and not with remarriage. He fully admits the Mosaic “precept,” but states that it was given for the hardness of their hearts. The union was made by God, and man ought not to sever it. The one justification for putting away, elsewhere admitted, is not here noticed. In verses 11, 12, addressed to the disciples, it is taught that either husband or wife marrying again after divorcing the former partner is guilty of adultery ; and no exception is made in any case whatsoever. The expression *μοιχᾶται ἐπ' αὐτήν*, *committeth adultery against her*, or *is responsible for adultery with regard to her*, is worthy of notice. If the ordinary translation, *committeth adultery against her*, be accepted, it follows that the sin of adultery is a sin committed against a man's own wife. Now it cannot be too strongly insisted upon that this principle is a distinctively Christian principle. It was foreign even to the Roman mind, although the Romans were a monogamous people. By the Roman law a married man only committed adultery when he sinned with another man's wife, and his

offence then was held to be not against his own wife, but against the man whose wife he had corrupted. In the case of a polygamous people this view is the only possible one. What Jew would for a moment have admitted that Abraham committed adultery against Sarah when he took Hagar for a wife? or that Jacob's marriage with Rachel was adultery against Leah? And if there were no adultery in having Rachel for a wife together with Leah, how could the marriage with Rachel have become adulterous if Jacob had seen fit to divorce Leah? Anyone acquainted with the polygamous peoples of the East will at once appreciate the force of this feeling. What Musulman would consider a sexual act on his part, however otherwise deplorable, as adultery against his existing wives? It can hardly be open to doubt that our Lord's teaching in this matter would be to any Jew startling in its novelty, and barely intelligible.

It has been said that verses 11 and 12 were addressed to the disciples "in the house" after the Jewish audience had dispersed. Their teaching may therefore be styled esoteric. It gives the fuller Christian explanation of a teaching felt to be difficult. Marriage is indissoluble, for one reason, because it is exclusive. A man who divorces his wife and marries again sins against his one real wife.

(iv.) *S. Luke* xvi. 18:

Πᾶς ὁ ἀπολύων τὴν γυναῖκα αὐτοῦ
καὶ γαμῶν ἑτέραν μοιχεύει· καὶ πᾶς ὁ
ἀπολελυμένην ἀπὸ ἀνδρὸς γαμῶν μοι-
χεύει.

Whosoever putteth away his wife,
and marrieth another, committeth
adultery: and whosoever marrieth her
that is put away from *her* husband
committeth adultery.

As in *S. Mark* x. 11, 12, remarriage after divorce is here stigmatised as adultery, no exception being made in any case. It is not easy to say to whom these words were addressed. If they are to be taken as forming one discourse with verses 15-17, they were addressed in rebuke to the Pharisees who "derided Him," and may be an instance of lofty teaching, employed less by way of argument than of judgment. If the words spoken to the Pharisees, and forming an interruption in the course of the teaching addressed to the disciples, are

to be confined, as seems most probable, to the three verses 15-17, then verse 18 would follow verse 13 and form part of an address delivered to "His disciples," though in the hearing of the Pharisees. In that case the verse may be taken, with S. Mark x. 11, 12, to represent the teaching which was directly intended for the disciples of Christ. Both passages maintain that remarriage is adulterous as a result of the existing bond with the one real partner.

(v.) *Rom. vii. 1-4:*

"Ἡ ἀγνοεῖτε, ἀδελφοί, (γινώσκονσι γὰρ νόμον λαλῶ) ὅτι ὁ νόμος κυριεύει τοῦ ἀνθρώπου ἐφ' ὅσον χρόνον ζῇ;

"Ἡ γὰρ ὑπανδρος γυνὴ τῷ ζῶντι ἀνδρὶ δέδεσται νόμῳ· ἐὰν δὲ ἀποθάνῃ ὁ ἀνὴρ, κατήργηται ἀπὸ τοῦ νόμου τοῦ ἀνδρός.

"Ἄρα οὖν ζῶντος τοῦ ἀνδρός μοιχαλὶς χρηματίζει, ἐὰν γένηται ἀνδρὶ ἐτέρῳ· ἐὰν δὲ ἀποθάνῃ ὁ ἀνὴρ, ἐλευθέρα ἐστὶν ἀπὸ τοῦ νόμου, τοῦ μὴ εἶναι αὐτὴν μοιχαλίδα, γενομένην ἀνδρὶ ἐτέρῳ.

"Ὡστε, ἀδελφοί μου, καὶ ὑμεῖς ἐθανατώθητε τῷ νόμῳ διὰ τοῦ σώματος τοῦ Χριστοῦ εἰς τὸ γενέσθαι ὑμᾶς ἐτέρῳ, τῷ ἐκ νεκρῶν ἐγερθέντι, ἵνα καρποφορήσωμεν τῷ Θεῷ.

Know ye not, brethren, (for I speak to them that know the law,) how that the law hath dominion over a man as long as he liveth?

For a woman which hath an husband is bound by the law to *her* husband so long as he liveth; but if the husband be dead, she is loosed from the law of her husband.

So then if, while *her* husband liveth, she be married to another man, she shall be called an adulteress: but if her husband be dead, she is free from that law; so that she is no adulteress, though she be married to another man.

Wherefore, my brethren, ye also are become dead to the law by the body of Christ; that ye should be married to another, *even* to him who is raised from the dead, that we should bring forth fruit unto God.

This passage has been much insisted on as a proof of the indissolubility of marriage, but apparently without sufficient grounds. The writer is arguing against the continued subjection of the Christian people to *the law*, *i.e.* the Jewish law. That law is dead, and Christians are therefore free to contract a new alliance, just as a woman is free to marry again when her husband is dead. Now it is not entirely clear under what law we are to understand that the woman is only free to marry again when her husband is dead. Under the Jewish law divorce was permitted, and it appears in practice to have carried with it the permission for even the woman to marry again. Under the Roman law marriage was simply a contract,

and liable to dissolution by the parties at any time without cause assigned. By the Christian rule, as we hope to shew, no cause short of death admitted the dissolution of a marriage. But when this epistle was written it was hardly possible that reference could yet be made to the Christian rule by way of illustration of the binding character of law. Apparently, therefore, we must understand the reference to be to the ordinary course of marriage, under either the Jewish or the Roman law. A man and his wife were married "till death" them did "part," unless they were divorced, an occasional occurrence with which the argument is not concerned.

If this be the right interpretation of the passage, it is without significance for the present enquiry.

(vi.) 1 *Cor.* vii. 10, 11:

Τοῖς δὲ γεγαμηκόσι παραγγέλλω, οὐκ ἐγὼ, ἀλλ' ὁ Κύριος, γυναῖκα ἀπὸ ἀνδρὸς μὴ χωρισθῆναι.

Ἐὰν δὲ καὶ χωρισθῇ, μενέτω ἄγαμος, ἢ τῷ ἀνδρὶ καταλλαγήτω· καὶ ἄνδρα γυναῖκα μὴ ἀφιέναι.

And unto the married I command, yet not I, but the Lord, Let not the wife depart from *her* husband.

But and if she depart, let her remain unmarried, or be reconciled to *her* husband: and let not the husband put away *his* wife.

These commands are addressed to the Corinthian Christians, who would ordinarily be under the Roman law in the matter of marriage. The word *χωρισθῆναι* must probably be understood to refer to a definite divorce, which, as will be seen, was under the Roman law readily attainable without criminal cause assigned. The first and obvious direction, which S. Paul, speaking in the name of the Lord, has to give, is that the wife be not separated from her husband. If she be so separated (and it will be seen that the practice of the early Church permitted, though it did not require, the woman to put away her husband for adultery), she is still to remain unmarried.

(vii.) 1 *Cor.* vii. 39:

Ἡ γυνὴ δέδεσται [νόμῳ] ἐφ' ὅσον χρόνον ζῇ ὁ ἀνὴρ αὐτῆς· ἐὰν δὲ κοιμηθῇ ὁ ἀνὴρ αὐτῆς, ἐλευθέρα ἐστὶν ᾧ θέλει γαμηθῆναι, μόνον ἐν Κυρίῳ.

The wife is bound [by the law] as long as her husband liveth; but if her husband be dead, she is at liberty to be married to whom she will.

The word *νόμῳ*, *by law*, is not found in the best manuscripts, and should be rejected. The Corinthian Christians, at least so many of them as were Gentiles, were not bound by the Jewish

law; while, as has already been remarked, the Roman law, under which they lived, regarded marriage as a contract terminable at any time by the will of the parties. It might therefore be concluded that here, as probably in Romans vii. 1-4, the writer is concerned only with the ordinary course of marriage. But there is an important difference between the two statements. In the Epistle to the Romans the reader is referred by way of illustration to the known conditions of the Jewish or of the Roman law. In the chapter now under review S. Paul is giving definite commandments to the Christian people, which are in part certainly consciously and avowedly new. Such are the instructions about the divorce and remarriage of converts. On the whole it seems most probable that this verse is to be understood as not merely indicating the ordinary rule, but as laying down a prohibition to the wife to proceed to remarriage during the lifetime of her husband. It will thus repeat in another form what has already been laid down in verses 10, 11.

The evidence of Holy Scripture on the question of the dissolubility of Christian marriage is now before us. The putting away of a wife for *πορνεία* is held blameless by S. Matthew xix. 9 and S. Matthew v. 32, as it has always been held by the Christian Church. There is no passage which certainly sanctions remarriage after divorce. The text of S. Matthew xix. 9, as it is found in some MSS., appears to do so, at least if the words are held to have reference to the Christian community, and if *πορνεία* be taken to include adultery. But there are extraordinary variations in the readings of this text; the original reading may well have contained no reference to remarriage at all; and in any case the uncertainty of the reading makes it very undesirable to base any argument upon it. Putting this passage aside, the adultery of those who marry again is clearly stated in S. Matthew v. 32 (the woman and her partner), in S. Mark x. 11, 12 (the man and the woman), in S. Luke xvi. 18 (the man and the woman's partner). The four first verses of the Epistle to the Romans speak of death as that which alone severs the bond which binds a woman to her husband, but the

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passage may have no exclusive reference to Christian usage, and if it refer to either Jewish or Roman law, it is only applicable under ordinary circumstances, and therefore of no significance for the present enquiry. In the seventh chapter of the first Epistle to the Corinthians, S. Paul bids the wife not to be separated from her husband; or if she have been separated to remain unmarried, or to be reconciled to her husband; adding later on in the same chapter a statement that the wife is bound as long as her husband liveth, the obligation apparently arising from the Christian rule.

These passages may be said to exhaust the direct witness of the New Testament on the subject of the indissolubility of Christian marriage.

II. THE CHURCH IN HISTORY.

A. *To the Conversion of Constantine (314 A.D.).*

AUTHORITIES.

HERMAS.

*Pastor, Mandatum iv.*¹

Λέγω αὐτῷ· Κύριε, ἐπίτρεψόν μοι ὀλίγα ἐπερωτῆσαι σε. Λέγε, φησίν. Κύριε, φημί, εἰ γυναῖκα ἔχῃ τις πιστὴν ἐν κυρίῳ καὶ ταύτην εὖρη ἐν μοιχείᾳ τινί, ἄρα ἁμαρτάνει ὁ ἀνὴρ συνζῶν μετ' αὐτῆς; Ἄχρι τῆς ἀγνοίας, φησίν, οὐχ ἁμαρτάνει· ἐὰν δὲ γνῷ ὁ ἀνὴρ τὴν ἁμαρτίαν αὐτῆς καὶ μὴ μετανοήσῃ ἢ γυνή, ἀλλ' ἐπιμένῃ τῇ πορνείᾳ αὐτῆς καὶ συνζῇ ὁ ἀνὴρ μετ' αὐτῆς, ἔνοχος γίνεται τῆς ἁμαρτίας αὐτῆς καὶ κοινωνὸς τῆς μοιχείας αὐτῆς. Τί οὖν, φημί, κύριε, ποιήσῃ ὁ ἀνὴρ, ἐὰν ἐπιμένῃ τῷ πάθει τούτῳ ἢ γυνή; Ἀπολυσάτω, φησίν, αὐτὴν καὶ ὁ ἀνὴρ ἐφ' ἑαυτῷ μενέτω· ἐὰν δὲ ἀπολύσας τὴν γυναῖκα ἐτέραν γαμήσῃ, καὶ αὐτὸς μοιχᾷται. Ἐὰν οὖν, φημί, κύριε, μετὰ τὸ ἀπολυθῆναι τὴν γυναῖκα μετανοήσῃ ἢ γυνή καὶ θελήσῃ ἐπὶ τὸν ἑαυτῆς ἄνδρα ὑποστρέψαι, οὐ παραδεχθήσεται; Καὶ μήν, φησίν, ἐὰν μὴ παραδέξῃται αὐτὴν ὁ ἀνὴρ, ἁμαρτάνει καὶ μεγάλην ἁμαρτίαν ἑαυτῷ ἐπισπάται, ἀλλὰ δεῖ παραδεχθῆναι τὸν ἡμαρτηκότα καὶ μετανοοῦντα· μὴ ἐπὶ πολὺν δέ· τοῖς γὰρ δούλοις τοῦ θεοῦ μετάνοιά ἐστιν μία. Διὰ τὴν μετάνοιαν οὖν οὐκ ὀφείλει γαμεῖν ὁ ἀνὴρ. Αὕτη ἡ πρῶξις ἐπὶ γυναικὶ καὶ ἀνδρὶ κεῖται. Οὐ μόνον, φησίν, μοιχεία ἐστίν, ἐὰν τις τὴν σάρκα αὐτοῦ

¹ Funk, *Patres Apostolici*, 1887, p. 392.

μιάνη, ἀλλὰ καὶ ὅς ἂν τὰ ὁμοιώματα ποιῇ τοῖς ἔθνεσιν, μοιχᾶται. Ὡστε καὶ ἐν τοῖς τοιούτοις ἔργοις ἐὰν ἐμμένῃ τις καὶ μὴ μετανοῇ, ἀπέχον ἀπ' αὐτοῦ καὶ μὴ συνζῆθι αὐτῷ· εἰ δὲ μὴ, καὶ σὺ μέτοχος εἶ τῆς ἁμαρτίας αὐτοῦ. Διὰ τοῦτο προσετάγη ὑμῖν ἐφ' ἑαυτοῖς μένειν, εἴτε ἀνὴρ εἴτε γυνή· δύναται γὰρ ἐν τοῖς τοιούτοις μετάνοια εἶναι. Ἐγὼ οὖν, φιλοῦν, οὐ δίδωμι ἀφορμὴν, ἵνα αὕτη ἡ πράξις οὕτως συντελῇται, ἀλλὰ εἰς τὸ μηκέτι ἁμαρτάνειν τὸν ἡμαρτηκότα. Περὶ δὲ τῆς προτέρας ἁμαρτίας αὐτοῦ ἔστιν ὁ δυνάμενος ἡμῖν δοῦναι· αὐτὸς γάρ ἐστιν ὁ ἔχων πάντων τὴν ἐξουσίαν.

S. JUSTIN MARTYR.

Apologia Prima pro Christianis, §§14, 15.¹

Ἵνα δὲ μὴ σοφίζεσθαι ὑμᾶς δόξωμεν, ὀλίγων τινῶν τῶν παρ' αὐτοῦ τοῦ Χριστοῦ διδαγμάτων ἐπιμνησθῆναι καλῶς ἔχειν πρὸ τῆς ἀποδείξεως ἡγησάμεθα, καὶ ὑμέτερον ἔστω, ὥς δυνατῶν βασιλέων, ἐξετάσαι εἰ ἀληθῶς ταῦτα δεδιδάγμεθα καὶ διδάσκομεν. Βραχεῖς δὲ καὶ σύντομοι παρ' αὐτοῦ λόγοι γεγόνασιν. Οὐ γὰρ σοφιστὴς ὑπῆρχεν, ἀλλὰ δύναμις Θεοῦ ὁ λόγος αὐτοῦ ἦν. Περὶ μὲν οὖν σωφροσύνης τοσοῦτον εἶπεν· Ὅς ἂν ἐμβλέψῃ γυναικὶ πρὸς τὸ ἐπιθυμῆσαι αὐτῆς, ἥδη ἐμοίχευσε τῇ καρδίᾳ παρὰ τῷ Θεῷ. Καί· Εἰ ὁ ὀφθαλμὸς σου ὁ δεξιὸς σκανδαλίζει σε, ἔκκοψον αὐτόν· συμφέρει γάρ σοι μονόφθαλμον εἰσελθεῖν εἰς τὴν βασιλείαν τῶν οὐρανῶν, ἢ μετὰ τῶν δύο πεμφθῆναι εἰς τὸ αἰώνιον πῦρ. Καί· Ὅς γαμεῖ ἀπολελυμένην ἀφ' ἑτέρου ἀνδρὸς, μοιχᾶται. Καί· Εἰσὶ τινες οἵτινες εὐνουχίσθησαν ὑπὸ τῶν ἀνθρώπων· εἰσὶ δὲ οἱ ἐγεννήθησαν εὐνοῦχοι· εἰσὶ δὲ οἱ εὐνούχισαν ἑαυτοὺς διὰ τὴν βασιλείαν τῶν οὐρανῶν· πλὴν οὐ πάντες τοῦτο χωροῦσιν. Ὡσπερ καὶ οἱ νόμῳ ἀνθρωπίνῳ διαγαμίας ποιοῦμενοι, ἁμαρτωλοὶ παρὰ τῷ ἡμετέρῳ Διδασκάλῳ εἰσὶ, καὶ οἱ προσβλέποντες γυναικὶ πρὸς τὸ ἐπιθυμῆσαι αὐτῆς.

Apologia Secunda, cap. 2.²

Γυνὴ τις συνεβίον ἀνδρὶ ἀκολασταίνοντι, ἀκολασταίνουσα καὶ αὐτὴ πρότερον. Ἐπεὶ δὲ τὰ τοῦ Χριστοῦ διδάγματα ἔγνω αὕτη, ἐσωφρονίσθη, καὶ τὸν ἄνδρα ὁμοίως σωφρονεῖν πείθειν ἐπειρᾶτο, διδάγματα ἀναφέρουσα, τὴν τε μέλλουσαν τοῖς οὐ σωφρόνως καὶ μετὰ λόγου ὀρθοῦ βιοῦσιν ἔσθθαι ἐν αἰωνίῳ πυρὶ κόλασιν ἀπαγγέλλουσα. Ὁ δὲ ταῖς αὐταῖς ἀτελεγαίαις ἐπιμένων, ἀλλοτρίαν διὰ τῶν πράξεων ἐποιεῖτο τὴν γαμετήν. Ἀσεβὲς γὰρ ἡγουμένη τὸ λοιπὸν ἡ γυνὴ συγκατακλίνεσθαι ἀνδρὶ παρὰ τὸν τῆς φύσεως νόμον καὶ παρὰ τὸ δίκαιον πῦρ ἐκ παντὸς πειρωμένην ποιεῖσθαι, τῆς συζυγίας χωρισθῆναι ἐβουλήθη. Καὶ

¹ Migne's Ed. pp. 348, 349.

² *Ibid.* p. 444.

ἐπεὶ ἐξεδυσσωπεῖτο ὑπὸ τῶν αὐτῆς, ἔτι προσμένειν συμβουλευόντων, ὡς εἰς ἐλπίδας μεταβολῆς ἤξοντός ποτε τοῦ ἀνδρὸς, βιαζομένη ἑαυτὴν ἐπέμενε. Ἐπειδὴ δὲ ὁ ταύτης ἀνὴρ, εἰς τὴν Ἀλεξανδρεῖαν πορευθεὶς, χαλεπώτερα πράττειν ἀπηγγέλθη, ὅπως μὴ κοινωνὸς τῶν ἀδικημάτων καὶ ἀσεβημάτων γένηται, μένουσα ἐν τῇ συζυγίᾳ, καὶ ὁμοδαίτος καὶ ὁμόκοιτος γινομένη, τὸ λεγόμενον παρ' ὑμῖν ρεπούδιον δοῦσα ἐχωρίσθη.

ATHENAGORAS.

Legatio pro Christianis, § 33.¹

Οὐ γὰρ μελέτη λόγων, ἀλλ' ἐπιδείξει καὶ διδασκαλία ἔργων τὰ ἡμέτερα· ἢ οἷός τις ἐτέχθη, μένειν, ἢ ἐφ' ἐνὶ γάμῳ. Ὁ γὰρ δεύτερος εὐπρεπὴς ἐστὶ μοιχεία. Ὅς γὰρ ἂν ἀπολύσῃ, φησὶ, τὴν γυναῖκα αὐτοῦ, καὶ γαμήσῃ ἄλλην, μοιχᾶται· οὔτε ἀπολύειν ἐπιτρέπων ἡς ἔπαυσέ τις τὴν παρθενίαν, οὔτε ἐπιγαμεῖν. Ὁ γὰρ ἀποστερῶν ἑαυτὸν τῆς προτέρας γυναικὸς, καὶ εἰ τέθνηκε, μοιχὸς ἐστὶ παρακεκαλυμμένος, παραβαίνων μὲν τὴν χεῖρα τοῦ Θεοῦ, ὅτι ἐν ἀρχῇ ὁ Θεὸς ἕνα ἄνδρα ἔπλασε καὶ μίαν γυναῖκα· λύων δὲ τὴν σάρκα πρὸς σάρκα κατὰ τὴν ἔνωσιν πρὸς μίξιν εἰς τοῦ γένους κοινωνίαν.

THEOPHILUS OF ANTIOCH.

Ad Autolycum, lib. iii. c. 13.²

Ἡ δὲ Εὐαγγελίας φωνὴ ἐπιτακτικώτερον διδάσκει περὶ ἀγνείας λέγουσα· Πᾶς ὁ ἰδὼν γυναῖκα ἀλλοτρίαν πρὸς τὸ ἐπιθυμῆσαι αὐτὴν ἤδη ἐμοίχευσεν αὐτὴν ἐν τῇ καρδίᾳ αὐτοῦ· καὶ ὁ γαμῶν, φησὶν, ἀπολελυμένην ἀπὸ ἀνδρὸς μοιχεύει· καὶ ὁς ἀπολύει γυναῖκα παρεκτὸς λόγου πορνείας, ποιεῖ αὐτὴν μοιχευθῆναι.

S. CLEMENT OF ALEXANDRIA.

Stromata, lib. ii. cap. 23.³

Ὅτι δὲ γαμεῖν ἢ Γραφὴ συμβουλεύει οὐδὲ ἀφίστασθαί ποτε τῆς συζυγίας ἐπιτρέπει, ἀντικρὺς νομοθετεῖ· Οὐκ ἀπολύσεις γυναῖκα, πλὴν εἰ μὴ ἐπὶ λόγῳ πορνείας· μοιχείαν δὲ ἡγείται τὸ ἐπιγῆμαι ζῶντος θατέρον τῶν κεχωρισμένων. Ἀνύποπτον δὲ εἰς διαβολὴν δείκνυσι γυναῖκα τὸ μὴ καλλωπίζεσθαι, μηδὲ μὴν κοσμεῖσθαι πέρα τοῦ πρέποντος, εὐχαῖς καὶ δεήσεσι προσανέχουσιν ἐκτενῶς· τὰς μὲν ἐξόδους τῆς οἰκίας φυλαττομένην τὰς πολλὰς, ἀποκλείουσιν δ' ὡς οἷόν θ' ἑαυτὴν τῆς πρὸς τοὺς οὐ προσήκοντας προσόψεως, προὐργιαίτερον τιθεμένην τῆς ἀκαίρου φλυαρίας τὴν οἰκουρίαν.

¹ Migne's Ed. pp. 365, 368.

² *Ibid.* Pat. Grae. tom. vi. c. 13.

³ *Ibid.* pp. 1096, 1097.

Ὁ δὲ ἀπολελυμένην λαμβάνων γυναῖκα μοιχᾷται, φησὶν· ἐὰν γάρ τις ἀπολύσῃ γυναῖκα, μοιχᾷται αὐτήν, τουτέστιν, ἀναγκάζει μοιχευθῆναι. Οὐ μόνον δὲ ὁ ἀπολύσας αἷτιος γίνεται τούτου, ἀλλὰ καὶ ὁ παραδεξιόμενος αὐτήν, ἀφορμὴν παρέχων τοῦ ἁμαρτῆσαι τῇ γυναικί· εἰ γὰρ μὴ δέχοιτο, ἀνακάμψει πρὸς τὸν ἄνδρα. Τί οὖν ὁ νόμος; Πρὸς ἀναστολὴν τῆς εἰς ἐπιφορίας τῶν παθῶν ἀναιρεῖσθαι προστάττει τὴν μοιχευθεῖσαν, καὶ ἐπὶ τοῦτῳ ἐλεγχθεῖσαν· ἐὰν δὲ ἱέρεια ᾖ, πυρὶ παραδίδοσθαι προστάττει.

Λιθοβολεῖται δὲ καὶ ὁ μοιχός· ἀλλ' οὐκ ἐν τῷ αὐτῷ τόπῳ, ἵνα μηδὲ ὁ θάνατος αὐτοῖς κοινόν ᾖ. Οὐ δὴ μάχεται τῷ Εὐαγγελίῳ ὁ νόμος· συνάδει δὲ αὐτῷ. Πῶς γὰρ οὐχί, ἐνὸς ὄντος ἀμφοῖν χορηγοῦ τοῦ Κυρίου; Ἡ γάρ τοι πορνείασα ζῇ μὲν τῇ ἁμαρτίᾳ, ἀπέθανε δὲ ταῖς ἐντολαῖς, ἡ δὲ μετανόησασα, οἷον ἀναγεννηθεῖσα κατὰ τὴν ἐπιστροφὴν τοῦ βίου, παλιγγενεσίαν ἔχει ζωῆς· τεθνηκυίας μὲν τῆς πόρνῃς τῆς παλαιᾶς, εἰς βίον δὲ παρελθοῦσας αἵτις τῆς κατὰ τὴν μετάνοιαν γεννηθείσης. Μαρτυρεῖ τοῖς εἰρημένοις διὰ Ἰεζεκιὴλ τὸ Πνεῦμα, λέγον· Οὐ βούλομαι τὸν θάνατον τοῦ ἁμαρτωλοῦ, ὥς τὸ ἐπιστρέψαι. Αὐτίκα λιθόλευστοι γίνονται ὥς ἂν διὰ σκληροκαρδίαν ἀποθανόντες τῷ νόμῳ, ᾧ μὴ ἐπέισθησαν· τῇ δὲ ἱερείᾳ ἐπιτείνεται τὰ τῆς κολάσεως, ὅτι ᾧ πλεῖον ἐδόθη, οὗτος καὶ πλεῖον ἀπαιτηθήσεται.

Stromata, lib. iii. cap. 6.¹

Τί δὲ ἐστὶν ὅπερ ὁ Κύριος εἶπε πρὸς τοὺς περὶ τοῦ ἀποστασίου πυνθανομένους, Εἰ ἔξεστιν ἀπολύσαι γυναῖκα, Μωϋσέως ἐπιτρέψαντος. Πρὸς τὴν σκληροκαρδίαν ἡμῶν, φησὶν, ὁ Μωϋσῆς ταῦτα ἔγραψεν· ἡμεῖς δὲ οὐκ ἀνέγνωτε, ὅτι τῷ πρωτοπλάστῳ ὁ Θεὸς εἶπεν· Ἔσεσθε οἱ δύο εἰς σάρκα μίαν; Ὡστε ὁ ἀπολύων τὴν γυναῖκα χωρὶς λόγου πορνείας ποιεῖ αὐτήν μοιχευθῆναι.

Stromata, lib. iii. cap. 6.²

Τὸ δὲ, Οὐ πάντες χωροῦσι τὸν λόγον τούτον· εἰσὶ γὰρ εὐνοῦχοι, οἵτινες ἐγεννήθησαν οὕτως· καὶ εἰσιν εὐνοῦχοι οἵτινες εὐνουχίσθησαν ὑπὸ τῶν ἀνθρώπων, καὶ εἰσιν εὐνοῦχοι οἵτινες εὐνούχισαν ἑαυτοὺς διὰ τὴν βασιλείαν τῶν οὐρανῶν. Ὁ δυνάμενος χωρεῖν χωρεῖτω· οὐκ ἔλασιν, ὅτι μετὰ τὴν τοῦ ἀποστασίου ῥῆσιν, πυνθόμενων τινῶν ὅτι, ἐὰν οὕτως ᾖ ἡ αἰτία τῆς γυναικὸς, οὐ συμφέρει τῷ ἀνθρώπῳ γαμῆσθαι· τότε ὁ Κύριος ἔφη· Οὐ πάντες χωροῦσι τὸν λόγον τούτον, ἀλλ' οἷς δέδοται. Τοῦτο γὰρ οἱ πυνθανόμενοι μαθεῖν ἐβουλήθησαν, εἰ συγχωρεῖ, καταγνωσθείσης ἐπὶ πορνείᾳ γυναικὸς καὶ ἐκβληθείσης, ἑτέραν γῆμαι.

¹ Migne's Ed. pp. 1149, 1150.

² *Ibid.* p. 1153.

TERTULLIAN.

De Monogamia, § 9.¹

Sed hae argumentationes potius existimentur de conjecturis coactae, si non et sententiae adstiterint, quas Dominus emisit in repudii retractatu, quod permissum aliquando jam prohibet; in primis, quia *ab initio non fuit sic*, sicut matrimonii numerus; tum quia *quos Deus conjunxit, homo non separabit*; scilicet ne contra Dominum faciat. Solus enim ille separabit, qui et conjunxit; separabit autem, non per duritiam repudii, quam exprobrat et compescit, sed per debitum mortis. Siquidem *unus ex passeribus duobus non cadit in terram sine patris voluntate*. Igitur, si *quos Deus conjunxit, homo non separabit* repudio; aequae consentaneum est, ut quos Deus separavit morte, homo non jungat matrimonio; proinde contra Dei voluntatem juncturus separationem, atque si separasset conjunctionem. Hoc quantum ad Dei voluntatem non destruendam, et initii formam restruendam. Caeterum, et alia ratio conspirat; imo non alia, sed quae initii formam imposuit, et voluntatem Dei movit ad prohibitionem repudii: *Quoniam qui dimiserit uxorem suam, praeterquam ex causa adulterii, facit eam adulterari*; et *qui dimissam a viro duxerit, adulterat utique*. Nam et nubere legitime non potest repudiata; et si quid tale commiserit sine matrimonii nomine, non capit elogium adulterii, qua adulterium in matrimonio crimen est? Deus aliter censuit, citra quam homines, ut in totum, sive per nuptias, sive vulgo, alterius viri admissio adulterium pronuntietur a Deo. Videamus enim quid sit matrimonium apud Deum, et ita cognoscemus quid sit aequae adulterium. Matrimonium est, cum Deus jungit duos in unam carnem, aut junctos deprehendens in eadem carne, conjunctionem signavit. Adulterium est, cum, quoquo modo disjunctis duobus, alia caro, imo aliena miscetur, de qua dici non possit: *Haec est caro ex carne mea, et hoc os ex ossibus meis*. Semel enim hoc et factum, et pronuntiatum, sicut ab initio, ita et nunc in aliam carnem non potest convenire. . . .

Ideoque abstulit repudium, quod ab initio non fuit; ut, quod ab initio fuit, muniat duorum in unam carnem perseverantiam, ne necessitas vel occasio tertiae concarnationis irrumpat, soli caussae permittens repudium, si forte praevenerit, cui praecavetur. Adeo autem repudium a primordio non fuit, ut apud Romanos post annum sexcentimum urbis conditae id genus duritiae commissum denotetur. Sed illi etiam non repudiantes adulteria commiscunt; nobis, etsi repudiemus, ne nubere quidem licebit.

¹ Migne's Ed. tom. ii. pp. 940-942.

De Monogamia, § 10.

Video jam hinc ad Apostolum nos provocari. Ad cujus sensum facilius perspicendum, tanto instantius praeulcandum est mulierem magis defuncto marito teneri, quominus alium virum admittat. Recogitemus enim repudium, aut discordia fieri, aut discordiam facere; mortem vero ex lege Dei, non ex hominis offensa evenire. Idque omnium esse debitum, etiam non maritorum. Igitur si repudiata quae per discordiam, et iram, et odium, et caussas eorum, injuriam vel contumeliam, vel quamlibet querelam, et anima et corpore separata est, tenetur inimico, ne dicam marito; quanto magis, illa, quae neque suo, neque mariti vitio, sed dominicae legis eventu, a matrimonio non separata, sed relicta, ejus erit etiam defuncti, cui etiam defuncto concordiam debet! A quo repudium non audiit, non divertit; cui repudium non scripsit, cum ipso est; quem amisisse noluit, retinet. Habet secum animi licentiam, qui omnia homini quae non habet, imaginario fructu repraesentat. Ipsam denique interrogo foeminam: Dic mihi, soror, in pace praemisisti virum tuum? Quid respondebit! An in discordia? Ergo hoc magis ei vineta est, cum quo habet apud Deum caussam. Non discessit, quae tenetur. Sed in pace. Ergo perseveret in ea cum illo necesse est, quem jam repudiare non poterit, ne sic quidem nuptura si repudiare potuisset.

Adversus Marcionem, lib. iv. cap. 34.¹

Sed Christus divortium prohibet, dicens: *Qui dimiserit uxorem suam, et aliam duxerit, adulterium committit: qui dimissam a viro duxerit, aequè adulter est.* Ut sic quoque prohibeat divortium, illicitum facit repudiatae matrimonium. Moyses vero permittit repudium in Deuteronomio: *Si sumpserit quis uxorem, et habitaverit cum ea, et exegerit non invenire eam apud eum gratium, eo quod inventum sit in illa impudicum negotium, scribet libellum repudii, et dabit in manu ejus, et dimittet illam de domo sua.* Vides diversitatem Legis et Evangelii, Moysi et Christi? Plane. Non enim recepisti illud quoque Evangelium (Matt. xix. 8) ejusdem veritatis, et ejusdem Christi, in quo prohibens divortium, propriam quaestionem ejus absolvit: *Moyses propter duritiam cordis vestri praecepit libellum repudii dare; a primordio autem non fuit sic, quia scilicet qui marem et foeminam fecerat, Erunt duo, dixerat, in carne una; quod Deus itaque junxit, homo disjunxerit?* Hoc enim responso, et Moysi constitutionem protexit, ut sui; et Creatoris institutionem direxit ut Christus ipsius. Sed quatenus ex his revincendus es, quae re-

¹ Migne's Ed. tom. ii. pp. 441-3.

cepisti, sic tibi occurram ac si meus Christus. Nonne et ipse prohibens divortium, et patrem tamen gestans eum qui marem et foeminam junxit, excusaverit potius quam destruxerit Moysi constitutionem? Sed ecce sic tuus sit iste Christus contrarium docens Moysi et Creatori, ut si non contrarium ostendero, meus sit. Dico enim illum conditionaliter nunc fecisse divortii prohibitionem, si ideo quis dimittat uxorem, ut aliam ducat: *Qui dimiserit, inquit, uxorem, et aliam duxerit, adulterium commisit, et qui a marito dimissam duxerit, aequè adulter est;* ex eadem utique caussa, qua non licet dimitti, ut alia ducatur: illicite enim dimissam pro indimissa ducens, adulter est. Manet enim matrimonium quod non rite diremptum est. Manente matrimonio nubere, adulterium est. Ita si conditionaliter prohibuit dimittere uxorem non in totum prohibuit; et quod non prohibuit in totum permisit alias, ubi caussa cessat ob quam prohibuit. Etiam non contrarium Moysi docet, cujus praeceptum alicubi conservat, nondum dico, confirmat. Aut si omnino negas permitti divortium a Christo, quomodo tu nuptias dirimis, nec conjungens marem et foeminam, nec alibi conjunctos ad sacramentum baptismatis et Eucharistiae admittens, nisi inter se conjuraverint adversus fructum nuptiarum, ut adversus ipsum Creatorem. Certe quid facit apud te maritus, si uxor ejus commiserit adulterium? habebitne illam? Sed nec tuum apostolum sinere scis conjungi prostitutae membra Christi. Habet itaque et Christum assertorem justitia divortii. Jam hinc confirmatur ab illo Moyses, ex eodem titulo prohibens repudium, quo et Christus, si inventum fuerit in muliere negotium impudicum. Nam et in Evangelio Matthaei: *Qui dimiserit, inquit, uxorem suam praeter causam adulterii, facit eam adulterari; atque ita adulter censetur et ille, qui dimissam a viro duxerit.* Caeterum praeter ex causa adulterii, nec Creator disjungit, quod ipse scilicet conjunxit, eodem alibi Moyse constituyente eum qui ex compressione matrimonium fecerat, non posse dimittere uxorem in omne tempus. Quod si ex violentia coactum matrimonium stabit, quanto magis ex convenientia voluntarium? sicut et prophetiae auctoritate, *Uxorem juventutis tuae non dimitte.* Habes itaque Christum ultro vestigia ubique Creatoris ineuntem, tam in permittendo repudio, quam in prohibendo. Habes etiam nuptiarum quoquo velis prospectorem, quas nec separari vult, prohibendo repudium, nec cum macula haberi, tunc permittendo divortium. Erubescere non conjungens quos tuus quoque Christus conjunxit. Erubescere etiam disjungens sine eo merito, quo disjungi voluit et tuus Christus.

Adversus Marcionem, lib. v. cap. 7.¹

Plane Christus vetat divortium, Moyses vero permittit. Marcio totum concubitus auferens fidelibus (viderint enim catechumeni ejus) repudium ante nuptae jubens, cujus sententiam sequitur, Moysi an Christi? Atquin et Christus,² cum praecipit *mulierem a viro non discedere, aut si discesserit, manere innuptam, aut reconciliari viro*, et repudium permisit quod non in totum prohibuit, et matrimonium confirmavit, quod primo vetuit disjungi, et si forte disjunctum voluit reformari.

Ad Uxorem, lib. ii. cap. 1.³

Nunc ad secunda consilia convertamur, respectu humanae infirmitatis, quarundam exemplis admoventibus, quae divortio vel mariti excessu, oblata continentiae occasione, non modo abjecerunt opportunitatem tanti boni, sed ne in nubendo quidem rursum disciplinae meminisse voluerunt, ut *in Domino potissimum nuberent*.

Lib. ii. cap. 2.⁴

Respondebo: Si spiritus dederit, ante omnia allegans Dominum magis ratum habere matrimonium non contrahi, quam omnino disjungi: denique divortium prohibet, nisi stupri causa, continentiam vero commendat.

De Patientia, § 12.⁵

Non licet nobis una die sine patientia manere. Atenim cum omnem speciem salutaris disciplinae gubernet, quid mirum quod etiam poenitentiae ministrat, solitae lapsis subvenire, cum, disjuncto matrimonio, ex ea tamen causa, qua licet seu viro, seu foeminae ad viduitatis perseverantiam sustineri, haec exspectat, haec exoptat, haec exorat poenitentiam quandoque inituris salutem. Quantum boni utrique confert! alterum non adulterum facit, alterum emendat.

¹ Migne's Ed. tom. ii. p. 486.

² *Et Christus*. Pamelius and Rigaltius here read "Christi Apostolus." Oehler defends the text as the genuine phrase of Tertullian, suggested (as Fr. Junius says) by the preceding words "Moses or Christ." To which we may add that in this particular place S. Paul mentions his injunction as Christ's especially: οὐκ ἐγὼ, ἀλλ' ὁ Κύριος (1 Cor. vii. 10).—*Dr. Holmes's Note*.

³ Migne's Ed. tom. i. p. 1289.

⁴ *Ibid.* tom. i. p. 1292.

⁵ *Ibid.* tom. i. p. 1268.

ORIGEN.

*Commentary on S. Matthew, ch. xix.*¹

Πλὴν ὁ Σωτὴρ καὶ τοῖς πειράζουσιν ἀποκρίνεται δόγματα· οἱ μὲν γὰρ ἔλεγον· “Εἰ ἔξεστιν ἀνθρώπῳ ἀπολῦσαι τὴν γυναῖκα αὐτοῦ κατὰ πᾶσαν αἰτίαν. Ὁ δὲ ἀποκριθεὶς εἶπεν· Οὐκ ἀνέγνωτε, ὅτι ὁ κτίσας ἀπ’ ἀρχῆς ἄρσεν καὶ θῆλυ ἐποίησεν αὐτούς;” καὶ τὰ ἐξῆς. Καὶ οἶμαι, ὅτι κατὰ τοῦτο προέτεινον τὸν λόγον οἱ Φαρισαῖοι τοῦτον, ὡς ἐπιληψόμενοι αὐτοῦ, ὃ τι ποτ’ ἂν εἶπῃ· οἷον εἰ μὲν εἶπεν, “Ἐξεστιν, ἐνεκάλεσεν αὐτῷ, ὡς ἐπὶ τοῖς τυχοῦσι διαλύοντι τοὺς γάμους· εἰ δὲ, Οὐκ ἔξεστιν, ὡς καὶ μετὰ ἁμαρτημάτων ἐπιτρέποντι συνοικεῖν ἄνδρα γυναικί . . .

Οὐχ ἑώρων τε τίνα τρόπον ἀνεπιλήπτως καὶ σοφῶς αὐτοῖς ἀποκρίνεται, πρότερον μὲν ἀποφάσκων τὸ ἀπολύειν τὴν γυναῖκα κατὰ πᾶσαν αἰτίαν, δεύτερον δὲ ἀποκρινόμενος πρὸς τὰ περὶ τοῦ βιβλίου τοῦ κατὰ τὸ ἀποστασιον· ἑώρα γὰρ, ὅτι οὐ πᾶσα αἰτία εὐλόγως λύει γάμον, καὶ ὅτι δεῖ τὸν ἄνδρα “συνοικεῖν” τῇ γυναικί, “ὡς ἀσθενεστέρῳ σκεύει ἀπονέμοντα τιμὴν” καὶ βαστάζοντα αὐτῆς τὰ ἐν ἁμαρτήμασι βάρη, καὶ δυσωπεῖ ἐκ τῶν ἐν τῇ Γενέσει ἐγγεγραμμένων τοὺς ἐπὶ τοῖς Μωϋσεως γράμμασιν αὐχοῦντας Φαρισαίους, λέγων τό· “Οὐκ ἀνέγνωτε ὅτι ὁ κτίσας ἀπ’ ἀρχῆς, ἄρρεν καὶ θῆλυ ἐποίησεν αὐτούς;” καὶ τὰ ἐξῆς· καὶ ἐπιφέρων αὐτοῖς διὰ τὸ· “Καὶ ἔσονται οἱ δύο εἰς σάρκα μίαν” ἀκόλουθον τῷ “εἰς σάρκα μίαν,” διδασκαλίαν, τήν· “Ὡστε οὐκέτι εἰσὶ δύο ἀλλὰ σὰρξ μία.” Δυσωπητικὸν δὲ πρὸς τὸ μὴ ἀπολῦσαι τὴν γυναῖκα κατὰ πᾶσαν αἰτίαν, καὶ τό· “Ὁ Θεὸς συνέζευξεν, ἄνθρωπος μὴ χωριζέτω.”

Εἰ καὶ ἐδόξαμεν δὲ βαθυτέρων ἢ κατὰ δύναμιν ἠφθαι εἰς τοὺς τόπους πραγμάτων, οὐδὲν ἦττον ἔτι διὰ τὴν λέξιν καὶ ταῦτα λεκτέον ὅτι τινὲς τῶν νόμων ἐγράφησαν οὐχ ὡς διαφέροντες, ἀλλ’ ὡς συμπεριφερόμενοι τῇ ἀσθενείᾳ τῶν νομοθετουμένων· τοιοῦτον γάρ τι δηλοῦται ἐν τῷ “Μωϋσης πρὸς τὴν σκληροκαρδίαν ὑμῶν ἐπέτρεψεν ἀπολῦσαι τὰς γυναῖκας ὑμῶν.” τὸ δὲ προηγούμενον καὶ διαφέρον νόμον τοῦ διὰ τὴν σκληροκαρδίαν γεγραμμένου δηλοῦται ἐν τῷ· “Ἀπ’ ἀρχῆς δὲ οὐ γέγονεν οὕτως.” Καὶ ἐν τῇ καινῇ δὲ Διαθήκῃ ἐστὶ τινα νενομοθετημένα ἀνάλογον τῷ· “Ὅτι Μωϋσῆς πρὸς τὴν σκληροκαρδίαν ὑμῶν ἐπέτρεψεν ὑμῖν ἀπολῦσαι τὰς γυναῖκας ὑμῶν.” οἷον γὰρ πρὸς τὴν σκληροκαρδίαν ὑμῶν γέγραπται διὰ τὴν ἀσθένειαν τό· “Διὰ δὲ τὰς πορνείας ἕκαστος τὴν ἑαυτοῦ γυναῖκα ἔχετω, καὶ ἐκάστη τὸν ἴδιον ἄνδρα ἔχετω,” καὶ τό· “Τῇ γυναικί ὁ ἀνὴρ τὴν ὀφειλὴν ἀποδιδότω, ὁμοίως δὲ καὶ ἡ γυνὴ τῷ

¹ Migne's Ed. tom. iii. pp. 12, sqq.

ἀνδρί.” Ἐπιφέρεται γοῦν αὐτοῖς· “Τοῦτο δὲ λέγω κατὰ συγγνώμην, οὐ κατ’ ἐπιταγὴν.” ἀλλὰ καὶ τό· “Γυνὴ δέδεται ἐφ’ ὅσον χρόνον ὁ ἀνὴρ αὐτῆς ζῇ· ἐὰν δὲ κοιμηθῇ ἀνὴρ αὐτῆς, ἐλευθέρα ἐστίν, ᾧ θέλει γαμιθῆναι, μόνον ἐν Κυρίῳ,” πρὸς τὴν σκληροκαρδίαν ἢ ἀσθένειαν ἡμῶν παρὰ Παύλῳ εἴρηται τοῖς μὴ βουλομένοις ζηλοῦν τὰ χαρίσματα τὰ μείζονα καὶ μακαριωτέροις γενέσθαι. Ἡδὴ δε παρὰ γεγραμμένα καὶ τινες τῶν ἡγουμένων τῆς Ἐκκλησίας ἐπέτρεψάν τινα, ὥστε ζῶντος τοῦ ἀνδρὸς, γαμίσθαι γυναῖκα, παρὰ τὸ γεγραμμένον μὲν ποιοῦντες ἐν ᾧ λέλεκται· “Γυνὴ δὲ ἐφ’ ὅσον χρόνον ζῇ ὁ ἀνὴρ αὐτῆς,” καὶ τό· “Ἄρα οὖν μοιχαλὶς χρηματίζει ἢ γυνὴ γενομένη ἀνδρὶ ἐτέρῳ ζῶντος τοῦ ἀνδρὸς,” οὐ μὴν πάντῃ ἀλόγως· εἰκὸς γὰρ τὴν συμπεριφορὰν ταύτην συγκρίσει χειρόνων ἐπιτρεπεσθαι παρὰ τὰ ἀπ’ ἀρχῆς νενομοθετημένα καὶ γεγραμμένα.

Τάχα δὲ τῶν τολμώντων τις Ἰουδαῖκος ἀνὴρ ἐναντιοῦσθαι τῇ τοῦ Σωτῆρος ἡμῶν διδασκαλίᾳ, φήσει, ὅτι καὶ ὁ Ἰησοῦς, εἰπὼν· “Ὃς ἂν ἀπολύσῃ τὴν γυναῖκα αὐτοῦ, παρεκτὸς λόγου πορνείας, ποιεῖ αὐτὴν μοιχευθῆναι,” ἐπέτρεψεν ἀπολῦσαι τὴν γυναῖκα ὁμοίως Μωϋσεῖ, ὃν εἶπε πρὸς τὴν σκληροκαρδίαν τοῦ λαοῦ νενομοθετηκέναι, καὶ ταῦτόν γε φήσει εἶναι τῷ λόγῳ τῆς πορνείας, δι’ ὃν εὐλόγως ἂν γυνὴ ἐκβληθείη ἀπὸ ἀνδρὸς, τό· “Ὅτι εἶδεν ἐν αὐτῇ ἄσχημον πρᾶγμα.” Ἀλλὰ λεκτέον πρὸς αὐτόν, ὅτι, εἴπερ ἡ κατὰ τὸν νόμον μοιχωμένη λιθοβοληθήσεται, δηλονότι οὐ κατὰ τοῦτο νοεῖται τὸ ἄσχημον πρᾶγμα· οὐ γὰρ ἐπὶ μοιχείᾳ δεῖ γράφειν βιβλίον ἀποστασίου, καὶ διδόναι εἰς τὰς χεῖρας τῆς γυναικὸς ἢ τινι τηλικαύτῃ ἄσχημοσίνῃ. Ἀλλὰ γὰρ τάχα Μωϋσῆς πᾶν ἁμάρτημα ἄσχημον εἶπε πρᾶγμα ὅπερ ἐὰν εὑρεθῇ ἐπὶ τοῦ ἀνδρὸς ἐν γυναικὶ μὴ εὐρισκούσῃ χάριν ἐνώπιον τοῦ ἀνδρὸς, γράφεται τὸ τοῦ ἀποστασίου βιβλίον, καὶ ἐξαποστέλλεται ἐκ τῆς οἰκίας τοῦ ἀνδρὸς ἢ γυνή· Ἀπ’ ἀρχῆς δὲ οὐ γέγονεν οὕτως.

Μετὰ ταῦτά φησιν ὁ Σωτὴρ ἡμῶν, μηδαμῶς ἐπιτρέπων ἐπ’ ἄλλῳ ἁμαρτήματι διαλύνειν γάμους ἢ μόνῃ πορνείᾳ εὐρισκομένη ἐν τῇ γυναικὶ, τὸ· “Ὃς ἂν ἀπολύσῃ τὴν γυναῖκα αὐτοῦ, παρεκτὸς λόγου πορνείας, ποιεῖ αὐτὴν μοιχευθῆναι.” Ζητηθείη δ’ ἂν εἰ διὰ τοῦτο κωλύει τὴν γυναῖκα ἀπολῦσαι, ἐὰν μὴ ἐπὶ πορνείᾳ μὲν ἅλῳ, φέρε δ’ εἰπεῖν, ἐπὶ φαρμακείᾳ ἢ ἀναιρέσει παρὰ τὴν ἀποδημίαν τοῦ ἀνδρὸς, τοῦ γεννηθέντος αὐτοῖς παιδίου, ἢ ἐφ’ οἷον δῆποτε φόνον. Εἰ δὲ καὶ ὑφαιρουμένη καὶ σὺλῶσα τὴν οἰκίαν εὐρεθείη τοῦ ἀνδρὸς, μὴ πορνεύουσα δὲ, ζητῆσαι τις ἂν εἰ εὐλόγως τὴν τοιαύτην ἀποβαλεῖ, ὥς τοῦ Σωτῆρος κωλύοντος παρεκτὸς λόγου πορνείας ἀπολῦσαι τινα τὴν ἑαυτοῦ γυναῖκα· ἐκατέρως γὰρ ἐμφαίνεται τι ἁτοπον, οὐκ οἶδα δὲ εἰ ἀληθῶς ἁτοπον· τηλικούτων γὰρ ἀνέχεσθαι ἁμαρτημάτων, ἃ ἔοικεν εἶναι χείρονα μοιχείας καὶ πορνείας,

ἄλογον εἶναι δόξει· πάλιν τ' ἂν ποιῆσαι παρὰ τὸ βούλημα τῆς διδασκαλίας τοῦ Σωτῆρος, πᾶς ἂν ὁμολογήσαι ἀσεβὲς τυγχάνειν.

Ἐφίστημι τοίνυν διὰ τί μὲν οὐκ εἶπε· “Μηδεὶς ἀπολύτω τὴν γυναῖκα αὐτοῦ παρεκτὸς λόγου πορνείας,” φησὶ δέ· “Ὅς ἂν ἀπολύσῃ τὴν γυναῖκα αὐτοῦ, παρεκτὸς λόγου πορνείας, ποιεῖ αὐτὴν μοιχευθῆναι.” ποιεῖ μὲν γὰρ ὁμολογουμένως τὸ ὅσον ἐφ' ἑαυτῷ μοιχευθῆναι τὴν γυναῖκα ὁ ἀπολύων αὐτὴν οὐ πορνεύσασαν· εἰ γὰρ “ζῶντος τοῦ ἀνδρὸς μοιχαλὶς χρηματίζει, ἂν γένηται ἀνδρὶ ἑτέρῳ,” ἀπολύσας δὲ αὐτὴν, πρόφασιν αὐτῇ δίδωσι δευτέρου γάμου, δηλονότι παρὰ τοῦτο ποιεῖ αὐτὴν μοιχευθῆναι· τὴν δὲ ἀλοῦσαν φαρμακίδα, ἢ φόνον δράσασαν, ἀπολογίαν ἔχειν ἢ μὴ, καὶ σὺ ζητήσῃς ἂν· δύναται γὰρ καὶ παρ' ἄλλας αἰτίας, παρὰ τὴν ἀπόλυσιν, ποιεῖν ὁ ἀνὴρ μοιχευθῆναι τὴν ἑαυτοῦ γυναῖκα, οἷον πέρα τοῦ δέοντος ἐπιτρέπων αὐτῇ πράττειν ἃ βούλεται, καὶ εἰς φιλίαν συγκαταβαίνειν ἀνδράσιν οἷς βούλεται· πολλάκις γὰρ ἐξ ἀπλότητος τῶν ἀνδρῶν τοιαῦτα πταίσματα συμβαίνειν γυναιξίν· ἄλλ' εἰ ἔστιν ἀπολογίας τόπος, ἢ μὴ, τοῖς τοιούτοις ἀνδράσιν ἐπὶ τοῖς τοιούτοις συμπτώμασιν, ἐπιμελῶς ζητήσας ἀποφανεῖς καὶ εἰς τὰ ἐπιπορημένα ἡμῖν κατὰ τὸν τόπον. Καὶ ἀποστερῶν δὲ ἀπὸ τῆς γυναικὸς ἑαυτὸν, ποιεῖ αὐτὴν πολλάκις μοιχευθῆναι, μὴ ἐκπληρῶν αὐτῆς τὰς ὀρέξεις, κἂν φαντασίᾳ πλείονος σεμνότητος καὶ σωφροσύνης τὸ τοιαῦτο ποιῇ· καὶ τάχα μᾶλλον οὗτος ἐπίληπτος ὁ τὸ ὅσον ἐφ' ἑαυτῷ ποιῶν αὐτὴν μοιχευθῆναι μὴ ἐκπληρῶν αὐτῆς τὰς ὀρέξεις, ἢ ὁ ἀπολύσας αὐτὴν παρεκτὸς λόγου μὲν πορνείας, ἐπὶ φαρμακείᾳ δὲ, ἢ φόνῳ, ἢ τινι τῶν βαρυτάτων ἀμαρτημάτων. Ὡσπερ δὲ μοιχαλὶς ἔστι γυνή, κἂν δοκῇ γαμίσθαι ἀνδρὶ, ἔτι ζῶντος τοῦ προτέρου· οὕτως καὶ ἀνὴρ δοκῶν γαμεῖν ἀπολελυμένην οὐ γαμεί, κατὰ τὴν τοῦ Σωτῆρος ἡμῶν ἀπόφασιν, ὅσον μοιχεύει.

In Leviticum Homilia, xi. § 2.¹

Secundum legem adulter et adultera morte moriebantur, nec poterant dicere poenitentiam petimus et veniam deprecamur. Non erat lacrymis locus, nec emendationi ulla concedebatur facultas, sed omnimodo puniri necesse erat, qui incurrisset in legem. . . . Apud Christianos vero si adulterium fuerit admissum, non est praeceptum ut adulter vel adultera corporali interitu puniantur; nec potestas data est episcopo ecclesiae adulteram praesenti morte damnare, sicut tunc secundum legem fiebat a presbyteris populi. . . . Nunc vero non infertur poena corpori, nec purgatio peccati per corporale supplicium constat, sed per poenitentiam; quam utrum quis digne gerat, ita ut mereri pro ea veniam possit, videto. Multi sunt enim, qui

¹ Migne's Ed. tom. ii. pp. 532, 533.

nec ad hoc inclinantur, nec poenitentiae refugium quaerunt; sed cum ceciderint, surgere ultra nolunt, delectantur in eo luto quo haeserint volutari.

S. CYPRIAN.

Testimonia adversus Judaeos, lib. iii. c. 90.¹

Uxorem a viro non recedere, aut si recesserit, innuptam manere.

In Epistola Pauli ad Corinthios prima: "Iis autem quae nupserunt praecipio non ego, sed Dominus, uxorem a viro non separari; si autem recesserit, manere innuptam, aut reconciliari viro, et virum uxorem non dimittere."

De Disciplina et Bono Pudicitiae, cap. 6.² (? S. CYPRIAN.)

Hanc sententiam Christus quando uxorem dimitti non nisi ob adulterium dicit interrogatus, tantum honorem pudicitiae dedit. Hinc nata est illa sententia: Adulteras non sinetis vivere.

THE APOSTOLICAL CANONS.

*Canon 47.*³

Εἴ τις λαϊκὸς τὴν ἑαυτοῦ γυναῖκα ἐκβάλλων, ἑτέραν λάβῃ, ἢ παρ' ἄλλον ἀπολελυμένην, ἀφορίζεσθω.

COUNCIL OF ELIBERIS.

*Canon 8.*⁴

Item foeminae, quae, nulla praecedente causa, reliquerint viros suos, et se copulaverint alteris, nec in fine accipiant communionem.

Canon 9.

Item foemina fidelis, quae adulterum maritum reliquerit fidelem, et alterum ducit, prohibeatur ne ducat; si duxerit, non prius accipiat communionem, nisi quem reliquerit, prius de saeculo exierit; nisi forte necessitas infirmitatis dare compulerit.

*Canon 64.*⁵

Si qua mulier usque in finem mortis suae cum alieno viro fuerit moechata, placuit, nec in fine dandam ei esse communionem. Si vero eum reliquerit, post decem annos accipiat communionem, acta legitima poenitentia.

¹ Migne's Ed. tom. ii. p. 804.

² *Ibid.* tom. ii. p. 855.

³ Mansi, tom. i. p. 40.

⁴ *Ibid.* tom. ii. p. 7.

⁵ *Ibid.* tom. ii. p. 16.

Canon 65.

Si cujus clerici uxor fuerit moechata, et scierit eam maritus suus moechari, et non eam statim projecerit, nec in fine accipiat communionem: ne ab his, qui exemplum bonae conversationis esse debent, ab eis videantur scelerum magisteria procedere.

Canon 70.

Si cum conscientia mariti uxor fuerit moechata, placuit, nec in fine dandam esse communionem; si vero eam reliquerit, post decem annos accipiat communionem.

Canon 78.

Si quis fidelis, habens uxorem, cum Judaea vel gentili fuerit moechatus, a communione arceatur. Quod si alius eum detexerit post quinquennium, acta legitima poenitentia, poterit dominicae sociari communioni.

Introductory statement.

The period immediately following the institution of Christ's kingdom upon earth must always be at once the most important corroborative source for the teaching of our Lord and His Apostles which tradition can supply, and also the period which is of all the most scantily furnished with formal and authoritative utterances. On the subject of the indissolubility of Christian marriage both these characteristics are very marked. The first three centuries of the Christian era supply several remarkable indications of the spirit of the Church, which is also presumably, in the absence of proof to the contrary, the spirit of the teaching of the Apostles; but it is not till the beginning of the fourth century that we begin to have the canons of synods and councils, authoritative utterances of the Church as such.

Position of the Early Christians.

Before proceeding to examine the authorities which we have, it will be well to recall the position of the early Christians generally with regard to marriage. Marriage to them was pre-eminently a subject as to which laws were only required for law-breakers. The Roman law met every need in the cases of all those Christian men and women who, having contracted in the first instance a marriage which no impediment barred, lived chastely together till death severed the tie. That most

married Christians would so live during the times of contempt and persecution is sufficiently obvious. It was not among persons of lax and unrestrained methods of life that the Christian faith found its adherents in the first three centuries. It was not in the little band of the faithful that adultery could find a natural home. We should probably not be far wrong in surmising that when it did occur the impenitent adulterer would incline to lapse into heathenism.¹ At that time there could be nothing to gain by a profession of Christianity in the case of one who would make no attempt to escape from the condition of deadly sin. And in such a case the lapse of morals would to the Christian community seem to merge in, and to be overshadowed by, the lapse of faith.

But, without dwelling on the merely conjectural, it is certainly fair to assume that the sin of adultery would be rare among the Christians of the early ages. Yet since the world, the flesh, and the devil are permitted to try us, their work always has to be reckoned with, and so the early Christians appear to have found. In the sin of adultery, as in some other sins against the sanctity of marriage, there were some, if not many, offenders. The offences, when they did occur, brought out into a clear light the fact that the Christian subjects of the empire lived under two systems of law, which could be much at variance. There was the law of Rome, and there was the law of Christ. Wherever the Roman laws of marriage could be conscientiously complied with, there everything conspired to encourage such compliance. In the many social relations with non-Christians, which at first were of necessity all but universally entertained,² there would be singularities on the part of Christians which were obtrusive enough without the obtrusion of any peculiar features which could be avoided. In not a few circumstances the Christian had no alternative but to "come out" from the world, and to "be separate"; and for that very reason it would be with him a matter at once of obvious expediency and of eager welcome to conform to common usage

Contrast of
the law of
Rome and
the law of
Christ.

¹ Compare Origen, *In Leviticum Homilia xi.* § 2, "Cum ceciderint, surgere ultra nolunt, delectantur in eo luto quo hæserint volutari."

² 1 Cor. v. 10.

wherever he could. In the matter of marriage, however, it became necessary from time to time to emphasize the fact that the law of Christ prohibited what was permitted by the law of Rome. By 139 A.D. S. Justin Martyr contrasts "some human law" with "the account of our Teacher."¹ In 177 A.D., or thereabouts, Athenagoras speaks of the Christian rules of marriage as "the laws which have been laid down by us" (τοὺς ὑφ' ἡμῶν τεθειμένους νόμους.)² Such laws were the rules prohibiting the Roman laxity of divorce,³ the marriage of Christians with non-Christians,⁴ and the marriage of persons related in ways which presented no bar to the secular marriage.⁵ In all cases, however, in which there was no conflict between the Roman law, and "the laws which have been laid down by us," the provisions of the Roman law appear to have been accepted and followed without doubt or hesitation. It becomes therefore important to our present enquiry to know what, during the first three centuries of the Christian era, was in fact the law of Rome in the matter of divorce. That law was, in truth, as regards the sanctioned grounds of divorce, appallingly simple. As the essential part of a marriage was held by the law to be mutual consent, it had come to be held that when this consent was at an end, the marriage would naturally terminate. Accordingly either party might declare his or her intention to dissolve the marriage. Ordinarily no judicial decree, no interference of any public authority whatsoever, was required to dissolve a marriage. A bill of divorce was commonly given, and where the marriage had been solemnized by certain of the forms which constituted a *conventio in manum*, there were also special forms for the dissolution of the marriage. A marriage by *confarreatio*, a form of marriage which under Tiberius was already very rare, was dissolved by the ceremony of *diffarreatio*;⁶ while a marriage by *coemptio* called for the process of *remancipatio*.⁷ For a marriage by *usus* there does not appear to have been any special formality of divorce.

The
Roman law

Facility of
divorce.

¹ *Apologia prima*, § 15.

² *Legat.* c. 33.

³ S. Matt. xix. 9; S. Matt. v. 32; S. Mark x. 11, 12; S. Luke xvi. 18; 1 Cor. vii. 10, 11.

⁴ 1 Cor. vii. 39; 2 Cor. vi. 14.

⁵ Levit. xviii. xx.

⁶ Hunter, *Roman Law*, p. 227, quoting Plutarch, *Quæst. Rom.* p. 270.

⁷ *Ibid.* quoting Gaius i. 136 A.

For those who were married in the manner almost universally adopted in the times of the emperors, that is to say, without any *conventio in manum*, divorce could be altogether informal, except that after the promulgation of the *lex Julia de adulteriis*, a bill of divorce had to be given in the presence of witnesses. But in all cases the ground of the dissent of both or even of one of the parties appears to have been held sufficient.¹ It must not indeed be left out of sight that the laxity of practice which followed on this permission was mourned by all right-minded Romans. Laws even were enacted which in the case of divorce on slender grounds by one of the parties so regulated the distribution of the dowry, and of the estate of the parties, as to amount to the infliction of fines and penalties for such divorces.² But the permission of divorce remained, making it possible for any Christian man or woman in a moment of passion to lawfully repudiate his or her consort so far as the secular law was concerned. Nor did the restrictions affecting persons make much real difference in practice. *Filii-familias* could not indeed divorce their wives without the consent of those under whose *potestas* they lived. By the *lex Papia Poppaea* again a freedwoman who had married her *patronus* could not divorce herself.³ But, despite these limitations, the canker was everywhere, and the Christian community had to reckon with it.

To the Christian feeling of a later age probably the laxity of the Roman law and of Roman practice regarding divorce will be felt to be most painful, just where to the Roman it was most unexceptionable. Mutual consent without other cause assigned appears to have been the most frequent, as it was the most facile, ground of divorce. The stricter Roman citizens felt that the licence of granting divorces which were demanded by one party but deprecated by the other, even though it could plead the cessation of mutual assent to the marriage tie, had nevertheless some element of breach of contract, in that it failed to supply that mutual assent to the discontinuance of the tie which in the case of other contracts was commonly

Divorce by
mutual
consent.

¹ Hunter, *Roman Law*, pp. 689, 690.

² *Ibid.* p. 691.

³ *Digest*, xxiv. 2. 11.

forthcoming; but, so far as the evidence goes, it never even occurred to the Roman legislators of the early centuries of the Christian era that where mutual consent to a divorce was present any legal objection was possible, or any further ground for the divorce could be required. If husband and wife were of one mind in wishing their mutual relations to come to an end, they brought them to an end. The law not only did not interfere, but would have been held to have no *locus standi* in the matter. Not till the time of Justinian did any Roman legislator dare to interfere with the freedom of divorce by mutual consent. The long struggle of Christian teaching with the Roman facility of divorce by mutual consent will be referred to in a later section of this chapter.

The *lex*
Julia de
adulteriis.

Very important for the proper understanding of the position taken up by the early Christians in the matter of separation of life is the *lex Julia de adulteriis coercendis* (17 B.C.), which at the period now being considered regulated the procedure in the case of the adultery of the wife. By this law the husband who retained his wife after an act of adultery was known to him, and forgave the adulterer, was held to be himself guilty of the offence of *lenocinium*. Sixty days were allowed to the husband under whose *manus*, or father under whose *potestas*, the adulteress was living, within which proceedings against her might be commenced. After that time any other person might prosecute.¹ The woman so convicted of adultery was deprived of half her dowry (*dos*), and the third part of her other property, and was banished to some small island. The adulterer lost half his property, and was similarly banished, but not to the same island as the woman. There were also certain civil disabilities.

With regard to this law it is important to notice that (a) the husband was bound to put away the wife whose adultery became known to him, under pain of being himself held guilty of the offence of *lenocinium*, that (b) the repentance of the wife, and her dismissal of the adulterer, appear to have made no exception to this rule, and that (c) while the wife's adultery was thus held to be a serious crime, the husband's

¹ Tacitus, *Annals*, ii. 85.

connection with another woman was in no way the subject of attention on the part of the law, provided the woman was not the wife of another. In that case, and in that case only, was an unfaithful husband regarded as an adulterer.¹

The *lex Julia* thus makes very clear the Roman feeling as regards divorce for adultery; but in interpreting this law, as indeed all the other early Roman laws of marriage, it must not be overlooked that marriage and divorce constituted a subject which the law rather ventured to guide than assumed to control. Just as, throughout the considerable legislation which assigned penalties to divorces under specified circumstances, the law never dared to pronounce such divorces to be actually void and bad in law; so, on the other hand, if in spite of the *lex Julia de adulteriis coercendis*, the husband chose to incur the odium and penalties of *lenocinium* by continuing marital relations, the law would not go so far as to pronounce such continuance of the marriage status invalid. It is also certain that if the husband was content to retain the adulterous wife, the cases would be very rare in which any other person would make it his business to bring home to the husband the odium and penalties of *lenocinium* by any legal process.

We have now before us the chief points of the Roman Law as it affects divorce. The Christian, when he demurred to divorce on the ground of the discontinuance of consent by one or both of the parties, would be in opposition to the current and legalised practice. In certain cases his attitude would not be without the weighty moral support of some of the best of Romans, but in others he would find himself standing alone. When adultery on the part of a wife occurred, he was bound by the law to prosecute her and put her away; as we shall see, he was by the Christian custom at liberty to put her away, and bound to do so if the adultery continued. He would not in consequence feel at liberty to marry again, as the non-Christian Roman would under similar circumstances; but he would be in no conflict with the law on that account, since the law laid upon him no obligation to remarry. The point of remarriage

The
Christian
Law.
Points of
difference.
Divorce by
consent.

Divorce for
adultery.

¹ For the provisions of the *lex Julia de adulteriis coercendis* see the *Digest*, xlviii. tit. 5; and Paulus, *Sentent. Recept.* ii. tit. 26.

Case of the
penitent
offender.

The sin of
the
husband.

Remarriage
after
divorce.

is obviously separate from that of putting away, and will be again adverted to. There was a serious difference with the law in the case where the wife was penitent, and indeed whensoever the wife became penitent; for the Roman law punished her for her crime, while the Christian husband restored her for her penitence. Perhaps a still more marked contrast with the tone of the Roman Law and of Roman society, was afforded by the view taken in the Christian Church of the sin of a husband with an unmarried woman. To the Roman Law it was simply *stuprum*; to the Christian it was adultery, and exactly parallel with the offence of the wife. It involved the right, if not the expediency, of the putting away of the offending husband by the injured wife; a right not indeed denied by the Roman Law in any case, but entirely opposed to its spirit so far as this particular offence supplied the ground of action. The great question of all as between the Roman and the Christian laws of marriage and divorce would doubtless arise on the point of the possibility of remarriage. By the Roman Law every divorced person was at liberty to remarry, even though the ground of separation was merely the dissent of one of the parties. The Christian Law was here in necessary antagonism. It is an antagonism which is constantly stated. It could not fail to be markedly apparent on many occasions. In the one case in which the putting away of wife or husband received general Christian sanction, the innocent spouse must have been sometimes led to question the righteousness of a restriction unknown outside the Church. Where such questionings are recorded in the first three centuries, the answers are uniformly against remarriage. On the other hand, if this one case had provided a remarkable instance in which the Christian law coincided with the law of Rome, while everywhere else it was in opposition to it, the relief of the strain just where it became most trying would surely bring some recognition. We shall find no such recognition except in the case of the women whose remarriage is related by Origen to have received the sanction of certain bishops. Origen, however, in mentioning the fact of such sanction, condemns it as "contrary to the scripture." Again, if any passage of Holy Scripture was understood in the

early centuries to sanction remarriage after divorce, we might reasonably expect that passage to be quoted. The only passage which might be readily so understood, viz., S. Matthew xix. 9, is never quoted to that end.

We may now enquire what the evidence is in detail. The Points of investigation. points which have to be borne in mind throughout the investigation appear to be mainly these:

1. Whether the husband may put away for *πορνεία*.
2. Whether the husband ought to put away for *πορνεία*.
3. Whether the wife may put away for *πορνεία*.
4. Whether the wife ought to put away for *πορνεία*.
5. Whether *πορνεία* means post-nuptial unfaithfulness.
6. Whether *πορνεία* means unchastity before marriage.
7. Whether *πορνεία* should be understood in a wide sense, as covering various forms of spiritual or figurative adultery.
8. Whether the guilty woman may remarry during the lifetime of the partner.
9. Whether the guilty man may so remarry.
10. Whether the innocent woman may so remarry.
11. Whether the innocent man may so remarry.
12. Whether the guilty wife may be received again on her penitence and amendment.
13. Whether the guilty wife ought to be received again in this case.
14. Whether the guilty husband may be received again on his penitence and amendment.
15. Whether the guilty husband ought to be received again in this case.
16. Whether the guilty wife may be received again without penitence and amendment.
17. Whether the guilty husband may be received again without penitence and amendment.
18. Whether S. Matthew xix. 9 is ever referred to on the point of remarriage.

The subject of the remarriage of converts will be reserved for another chapter as involving an altogether different question, the question, that is to say, of the dissolubility of non-Christian

marriage. The question of dissolubility or indissolubility now before us has reference to Christian matrimony only.

Hermas.

The first Christian writer who alludes to the subject after S. Paul is Hermas, an inhabitant of Rome, probably though not certainly the Hermas alluded to in S. Paul's Epistle to the Romans.¹ In the *Shepherd*, a book dating from about 75 A.D., and of such weight in sub-Apostolic times that it was read in the services of the Church as Holy Scripture, Hermas is clear on the point that a Christian, "if he know that his wife hath sinned, and hath not done penance, but abideth in her fornication, and he still liveth with her as a husband, will be guilty of her crime, and partaker of her adultery."² Here the Christian sentiment is quite at one with the *lex Julia de adulteriis*; the husband who retains the adulteress is guilty of connivance of adultery, of *lenocinium*. To avoid this, "let the husband dismiss her, and let him abide by himself." Separation of life then is a duty, and not merely a permission. The question of remarriage is hardly at this point entertained. The adulteress is to be put away. But the Angel of Penitence, who is represented as the speaker, has other advice "if the dismissed wife do penance, and desire to return to her husband." In that case, "if her husband receive her not, he sinneth, and bringeth a great sin upon himself. It is his duty to receive the woman which is a sinner, who hath done penance." Here Hermas is in direct opposition to the law of Rome. The mercy of Christ to the penitent sinner must be the mercy of the Christian. And this mercy supplies one ground at least for another rule which is in even more startling opposition to the law and to the practice of the Empire. If the husband had been bound to put the adulteress away, he is no less bound to remain unmarried for her sake. "With a view then to her penance, the husband ought not, having sent his own wife away, to marry another. . . . For this cause is it *commanded* to you both to abide single, both husband and wife; because that in such a case there may be penitence." The reason assigned is touching in its charity; we are already a whole world removed from the attitude of the Julian law. Yet the writer does not

**Adulterous
wife to be
dismissed.**

**Penitent
wife to be
restored.**

**Husband to
remain un-
married.**

¹ Romans xvi. 14.

² Hermas, *Pastor*, Mandatum iv.

forget that there is another reason; in the language of a later day the parties are bound by the *vinculum* of Christian marriage. "The matter stands on the same footing on the man's side as on the woman's."

We seem to have here the line of argument familiar in later writers. They have argued that since our Lord has laid down that the woman who is put away is, with her partner, guilty of adultery if she remarry, clearly she is bound to her husband still. If then she is bound to him, the *vinculum* remains; he too is bound to her. As Hermas has it: "The matter stands on the same footing on the man's side as on the woman's." These indeed are all the words of Hermas on this point, and the words just used to explain them employ, as we have said, the language of a later age; but how explain them else? They follow immediately on the statement that "the husband ought not, having sent his own wife away, to marry another." One is innocent, the other guilty; but as regards remarriage, "the matter stands on the same footing on the man's side as on the woman's." Each is married to the other; neither therefore is at liberty to marry again.

It is noticeable in respect of the true reading of S. Matthew S. Matthew
xix. 9. xix. 9, that there is no hint of any teaching of our Lord which seems at variance with this conclusion. "It is commanded to you both to abide single," nor does Hermas know of any exception to the command which applies to the case before him.

Hermas has no difficulty in understanding *πορνεία* to mean Meaning of
πορνεία. post-nuptial adultery. He says that the husband is a "partaker of her adultery," if after "he knows of her sin, the wife repent not but continue in her *πορνεία*."

There is another point of considerable importance touched upon in the passage quoted from Hermas. Does the adultery Spiritual
adultery. which sanctions or requires separation of life include anything other than literal adultery? Hermas says that it does. "He too who maketh an image committeth adultery." And idolatry being thus on the same footing as literal adultery, ought, he thinks, while it lasts, to require and not merely to sanction separation. "And if she persist in those doings, and do no

penance, retire thou from her, and in no wise live with her: else thou too wilt be partaker of her sin." It will be seen as we proceed that Hermas is by no means alone in this opinion, that there is a certain spiritual fornication which may justify separation of life.

S. Justin
Martyr.

The next voice comes to us after the lapse of sixty-four years. It is that of S. Justin Martyr, whose *First Apology for the Christians* was addressed to the Emperor Antoninus Pius and his sons in 139 A.D. In it he says that our Lord, whose

Remarriage
of divorced
wife
adultery.

"Word was the power of God," had taught, among other precepts of higher moral tone than was usual among the Romans, that "he that marrieth one put away by another man committeth adultery."¹ The case of the innocent husband in a divorce for adultery is not here included, nor are we necessarily to understand that the woman put away is put away for adultery; but there is no suggestion that a woman divorced for adultery is released thereby from the marriage bond, and so at liberty to marry. So far as the words go, they indicate that there are no exceptions, but that any woman put away by her husband would be guilty of adultery if she were to marry another man. Such teaching had already made in the Christian mind the most marked distinction between the Christian rules and human laws such as those of the Roman empire. "They who under some human law contract bigamy are sinners in the account of our Teacher." Keble remarks upon this passage that "the Emperors are challenged to make enquiry; which negatives any suspicion that S. Justin was giving his own theory, not declaring the received system of the Church."²

First re-
corded case
of separa-
tion of life.

In the *Second Apology*, S. Justin records a very interesting case of separation of life.³ It is the first actual instance of such separation which finds a record in the history of the Christian Church. A woman who was a convert from heathenism had prior to her conversion led with her husband a life of irregular indulgence (*ἀκολασταίνουσα*). On accepting the Christian faith she reformed her ways, and though her

¹ S. Justin Martyr, *Apologia Prima pro Christianis*, § 14.

² Keble, *Sequel of the Argument*, &c. p. 8.

³ S. Justin Martyr, *Apologia Secunda*, c. 2.

husband did not follow her to baptism, she evidently elected to remain with him after her baptism in accordance with S. Paul's advice in 1 Corinthians vii. Her own condition therefore became from that time the condition of a Christian wife; her matrimony became holy matrimony; she was bound as much as any other Christian woman, although her husband was not similarly bound. The separation which followed cannot therefore be regarded as coming under the head of that divorce upon conversion which will be considered in another chapter. The woman found that her husband did not amend his ways as she had hoped, and unfortunately the mischief did not end there, for he actively endeavoured to make her a party to certain refinements of sinful indulgence (παρὰ τὸν τῆς φύσεως νόμον, κ.τ.λ.) To escape being involved in deadly sin, she availed herself of the permission of the secular law, and gave her husband a bill of divorce (τὸ λεγόμενον πᾶρ' ἡμῶν ῥεπούδιον), thus freeing herself from his power, and obtaining separation of life. In all probability, if the ground of divorce was stated in the instrument, it would be simple dissent on the part of the wife to the continuance of the marriage. Apart from this indeed the husband's conduct would not have constituted a ground of divorce, nor would his conduct add any weight to her dissent, which was entirely sufficient. There is no hint that the lady married again.

What is chiefly worthy of remark for our purposes in the case is that a Christian woman put away her husband, and that she did it on the real ground of sin on the husband's part, which was not adultery, but only in some respects analogous to adultery. Her conduct appears to have encountered no blame from the Christian authorities, though it was not acceptable to her personal friends.

We come next to another apologist, Athenagoras, who addressed his *Legatio pro Christianis* to the Emperor Marcus Aurelius somewhere about 177 A.D. He is the earliest advocate of those strong views against second marriages which in their rigorist development were a few years later a striking characteristic of the Montanism of Tertullian. Christians, according to Athenagoras, would either remain unmarried or be content

Athena-
goras.

All second marriages inadmissible.

with a single marriage.¹ Any second union was but a reputable adultery (*ἐνπρεπὴς μοιχεία*). Our Lord Himself had forbidden one class of second marriages, those following on divorce, with the plain statement that the person remarrying was an adulterer. In the other class of second marriages, that is to say, marriages after the death of the first wife, the husband remarrying was but a veiled adulterer.

The views here expressed on digamy, which soon found uncompromising expression in Tertullian, have been universally rejected by the Church. As regards controversies of the present day they are perhaps chiefly remarkable as shewing how impossible would have been the admission of polygamous unions in the Church of the first three centuries. The passage which has been cited is, however, important in our present connexion as shewing that Athenagoras rejected the possibility of the rightful remarriage even of the divorcing husband.

Theophilus of Antioch.

Theophilus of Antioch was bishop of that city in the latter part of the second century. (A.D. 171-183.) He wrote an *Apology to Autolycus*, who is represented as a cultivated heathen. In the third book,² refuting the charges of immorality

Contrast of heathen and Christian morality.

brought against the Christians, he claims for them a morality higher than that of others, and quotes "the voice of the gospel" as follows: "Every man who sees another's wife to lust after her has already committed adultery with her in his heart; and he," saith it, "who marrieth a woman put away by her husband committeth adultery; and whoso putteth away his wife, saving for the cause of fornication, causeth her to commit adultery." The contrast in all three points between the Christian and the Roman law was marked.

S. Clement of Alexandria

S. Clement of Alexandria is something more than a mere witness to the opinions which were held or could be held in his day. He is a recognised authority in the Church. By birth either an Alexandrian or an Athenian, celebrated as the head of the catechetical school of Alexandria at the close of the second century (190-203 A.D.), he was not only a renowned theological writer and teacher, but a man of wide and varied

¹ Athenagoras, *Legatio pro Christianis*, § 33.

² Theophilus of Antioch, *Ad Autolycum*, lib. iii. c. 13.

learning, and a master of Greek language and Greek thought. His quotations from Holy Scripture are often inaccurate, and appear to be from memory; but he is the earliest Greek writer who largely uses the scriptures of the New Testament, and, inaccuracies notwithstanding, his evidence as to the original readings of disputed passages is of the highest value. "Not unfrequently he is one of a very small group of witnesses who have preserved an original reading. (e.g. 1 Cor. ii. 13; vii. 3, 5, 35, 39, &c.)."¹

The bearing of this on the text of S. Matthew xix. 9 has already been referred to. The context of his citation of that verse is now before us.² He says that Holy Scripture only permits the putting away of a wife on the ground of fornication, and "considers it adultery to contract another marriage during the lifetime of either of the separated parties." Even if his citation from S. Matthew xix. 9 be from memory, there is every reason why in such a connexion he should have remembered the phrase καὶ γαμήσῃ ἄλλην, and shall marry *another*, if he had known it; but his citation has no such phrase, and he explains μοιχᾶται in the sense "compelleth her to commit adultery." On another ground it is not to be supposed that S. Clement was omitting by an oversight the case of the innocent husband who has put away an adulterous wife. He deals with the case expressly in one of the passages quoted from *Stromata*, iii. cap. 6. He quotes the words of the apostles, "If the case of a wife be thus, it is not good for the man to marry," as an interrogation; and he remarks, "They in making this enquiry sought to learn whether, when a wife has been found guilty on a charge of fornication, and has been put away, it is permitted to marry another." In the opinion of S. Clement, the apostles understood our Lord, as he himself understood Him, to bar all remarriage.

S. Matthew
xix. 9.

Wife
may be
dismissed.

Remarriage
after di-
vorce not
admitted.

S. Clement then knows nothing of remarriage during the lifetime of the husband or wife, except to condemn it. On the subject of the pardon of the penitent adulteress he is at one

¹ Bp. Westcott, Article "Clement of Alexandria" in the *Dictionary of Christian Biography*.

² S. Clement of Alexandria, *Stromata*, ii. 23.

Penitent
wife to be
restored.

with Hermas. It is a matter of desire that a divorced woman should "return to her husband." Whosoever hinders this partakes of her sin. Here S. Clement feels that he has to justify his position. He does so by a mystical analogy, not perhaps without its beauty as a devotional thought, but of little value as an argument. But such as it is, the analogy is used to justify the restoration of the penitent adulteress.¹

To sum up the opinions of S. Clement: He recognises that a man may put away his wife for the cause of fornication; to his mind Holy Scripture "considers it adultery to contract another marriage during the lifetime of the separated parties"; and he is of opinion that the adulteress should be restored by her husband on her penitence.

Tertullian.

While S. Clement was teaching in Greek at Alexandria, another great writer of the African continent, born at Carthage sometime in the middle of the second century, was pouring forth treatise after treatise in Latin. Tertullian, "the first of the great Latin Fathers in point of date, their chief in fire and daring, and the first to create a technical Christian Latinity,"² was converted to Christianity in 192 A.D., and was shortly afterwards ordained priest, probably exercising his ministry at Carthage. His apologetic writings and several other works were written during the next few years. Then, driven from the Church as it would seem by the envy of the Roman clergy on the one hand, and by the rasping severity of his own judgments on the other, he became a Montanist (c. 199-203 A.D.). Able, but hotly partisan and not over-scrupulous in every cause he took in hand, he is rather to be looked upon as a witness to the practice of his day, than as himself an authority. Especially is this the case of the works written during his Montanism.

The passages printed above are from various treatises. The treatises *Ad Uxorem* and *De Patientia* were written while he

¹ "For, if you mark it, as the fallen woman liveth indeed unto sin, but is *dead* to the commandments, so the penitent, being as it were newborn in her effectual conversion, has a regeneration unto life, the old harlot being *dead*, and she that is born in the way of penitence having come to life again."

² Prof. Fuller, in the *Dictionary of Christian Biography*, art. *Tertullianus*.

was in the Church (c. 197–199 A.D.). The same seems to have been the case with the first edition of the *Adversus Marcionem* (c. 200 A.D.); as we have it, however, the treatise is assigned to the fifteenth year of Severus, or 208 A.D., and it bears the marks of a good deal of revision effected in the Montanist period. The *De Monogamia*, of all the treatises which Tertullian wrote perhaps the most distressing to the orthodox reader, may have been written about 207 A.D., or about 217 A.D. It breathes the hard Montanist spirit in its most hateful mood.

The citations from this work, though last in point of time, may perhaps with convenience be noticed first. In reading them we are painfully struck by the persistence with which Tertullian denies the lawfulness of the remarriage of those whose consorts have been taken away by death. In this, it need hardly be said, he is distinctly at variance at once with Holy Scripture, and with the whole tradition of that Catholic Church of nineteen centuries which is known to us. But the very inadmissibility of the contention makes the argument from practice which is put forward to support it the more valuable. Tertullian speaks of “those sentences also which our Lord uttered in reconsidering divorce, when now forbidding it, after it had been sometime allowed,” and reasons “that if ‘what GOD hath joined man may not put asunder’ by divorce, it is but consistent that those whom God hath separated by death, man should not conjoin in marriage.”¹ The parallel shews plainly what the word *repudium* here means. It must necessarily mean that entire severing of the marriage bond which admits remarriage. This, Tertullian says, our Lord forbade “after it had been sometime allowed.” It is not contended merely that this would be the right understanding of our Lord’s teaching, but it is assumed that every one knows that divorced people are not to contract fresh marriages, and it is argued for the Montanist contention that this ought to shew the unlawfulness of digamy.

Inadmissibility of remarriage after divorce assumed as undisputed.

He proceeds to recast the same argument from our Lord’s statement in S. Matthew v. 32, that the woman put away, if she marry again, is together with her partner guilty of adultery.

And as taught by our Lord.

¹ Tertullian, *De Monogamia*, § 9.

This shews, he argues, that, as we should say, the *vinculum* still exists. "Because neither can the divorced woman lawfully marry, and if she have committed any sin of that kind without the name of matrimony, does it not admit the title of adultery on account of her matrimony, in that adultery is a crime incident to the marriage state?"¹ It would not be possible for her to commit adultery, unless she had a husband. So that, notwithstanding the separation of life her husband is her husband still. Similarly, argues Tertullian, notwithstanding the separation of life when the husband dies, the husband is the husband still. The inference has been rejected by Christendom: the basing of the argument upon the inability of a divorced person to contract a fresh marriage is of the utmost significance. The passage should be read in its entirety. He proceeds, "It is matrimony, when GOD unites two into one flesh; or finding them previously joined in the same flesh hath set His seal to their union. It is adultery when, these two being in any way disunited, connexion takes place with another, nay an alien, flesh." In the course of the argument Tertullian is found using the word *repudium* in the sense of separation of life. He says our Lord *allowed* "divorce on one ground only, if haply the evil against which the precaution is directed have previously occurred." But he goes on to say, comparing the Christian with the secular law: "They (the non-Christian Romans), while not divorcing, form adulterous connexions: we, though we divorce, may not find leave even to marry." The right of remarriage then forms no part of the divorce which was permitted to Christians. Again, pressing his teaching that a widow ought to remain unmarried by the analogy of the divorced, he says: "The wife must needs continue in peace with her departed husband, whom she will now have no power to put away; and if she had, not even so might she marry again."

Christians
divorce, but
do not
remarry.

A fruitful source of confusion may here be pointed out. It is common to Tertullian, the earliest of the Latin writers of Christendom, and to the latest canonist or theologian who may have written a treatise in the Latin language. The words

¹ Tertullian, *De Monogamia*, § 9.

divortium and *repudium*, which are generally used as synonymous and interchangeable, may either of them mean two things; they may mean what English lawyers call *divortium a mensa et thoro*, divorce from bed and board, which involves separation of life, but no severance of the marriage bond or *vinculum*, or they may mean that entire severance of the bond, which would put it in the power of the person divorced to contract a fresh marriage. Either of these words is often used by the same writer in both of these senses on the same page; and it may be taken as a canon for the study of the Latin theology of marriage, that the words *divortium* and *repudium* must on every single occasion of their use be challenged as to the meaning which is to be conveyed in that particular instance.

The words
divortium
and
repudium.

The passage next quoted is from the fourth book against Marcion, and is remarkable as having been differently understood by such authorities as Pusey and Keble. Tertullian says, "He hath forbidden divorce with a condition, if a man put away his wife to that end, that he may marry another. . . . Thus, if it was under a condition that He forbade putting away, He did not entirely forbid: and what He did not entirely forbid, He permitted in other cases, where the ground of prohibition does not hold."¹ Pusey understands that Tertullian here indicates a permission to remarry in certain cases.² Keble says, "The meaning seems to be that 'He allowed separation, if without a view to dissolution of marriage.'"³ Pusey says: "It is remarkable that Pamelius and others explain away this testimony of Tertullian, being opposed to the Roman practice, by reference to the treatise *De Monog.* c. 9, 10, written against the Church, and because he there does not allow of the marriage of the divorcing party, infer that neither does he here, forgetting that he there rejects second marriage altogether, even of the widowed, which he here admits." But that Pamelius and Keble are right in their contention is

The teaching of the treatise
"Against Marcion."

¹ Tertullian, *Adversus Marcionem*, lib. iv. c. 34.

² Pusey in Note O to Oxford translation of Tertullian, p. 431.

³ Keble, *Sequel to the Argument*, &c. p. 18, note y.

abundantly clear from a passage in the fifth book of this same treatise against Marcion, which Pusey and all other writers on this subject appear to have overlooked. In this passage Tertullian says: "Christ, however, when He commands 'the wife not to depart from her husband, or if she depart to remain unmarried, or be reconciled to her husband,' has both permitted putting away (*repudium*) in that He has not altogether forbidden it, and has confirmed [the bond of] marriage, in that He has first forbidden it to be severed."¹ This, then, may be taken to settle the question of the view taken by Tertullian, at the time when the treatise against Marcion was finally revised and assumed the shape in which we know it. It must not, however, be supposed that the treatise can be cited as having the authority of orthodoxy. Originally written in the years which preceded Tertullian's lapse into Montanism, the revised edition of the treatise as it has come down to us dates, as before noticed, from the fifteenth year of Severus, or 208 A.D., and may even be subsequent to the *De Monogamia*.² All that can be certainly stated of these two treatises in the present connexion is that they permit separation of life for adultery; that they forbid remarriage in every case during the lifetime of the partner; and that there is to be found throughout a tacit assumption that there is nothing in these positions which any Christian, orthodox or other, is likely to question. The treatises are not to be trusted as orthodox; but, as Keble suggests, if it had been usual for the orthodox to allow remarriage after divorce, Tertullian, with the views he held and the hard words he dealt, would certainly have charged them with it as with a corruption.³

Instances
of laxity.

The passage next cited is from the *Ad Uxorem*, a treatise which is assigned to the orthodox years of Tertullian's Christianity. It is remarkable as apparently indicating instances, or at least an instance, of laxity of practice, while in no way implying that the Church had accorded any sanction to such laxity. Tertullian speaks of "certain women who, when by

¹ Tertullian, *Adversus Marcionem*, lib. v. c. 7.

² Prof. Fuller, art. *Tertullianus*, in the *Dictionary of Christian Biography*.

³ Keble, *Sequel to the Argument*, p. 13.

divorce or by a husband's death, an occasion of continency was offered, had not only thrown away the opportunity of so great a good, but even in marrying again had not chosen to remember the rule that, first and chiefly, they should marry in the Lord."⁴ The experience of most English-speaking countries for many years past has made it much easier than formerly for Anglican Churchmen to understand the relations of the Christians of the first three centuries to the secular law in the matter of divorce.

Under the secular law of the Roman Empire nothing was easier than to effect on the mere ground of dissent a divorce which carried with it the right of remarriage. No questions were asked; no ecclesiastical authority had to be consulted; the man or the woman was absolutely free in a moment of passion to divorce the wife or the husband, as the case might be, and to contract a new marriage; and to the secular law it mattered nothing whether the new consort were a Christian or a heathen. In such a case the matter would not in fact come before the Christian authorities at all till all this had been carried through, and the question of discipline then arose, "Is the offending person to be retained in communion or not?" What answer was given to this question by the Christian synods as soon as they began to take up the matter, we shall presently see. Pending such decisions, our own experience of the past thirty-five years would seem to indicate that the action of individual diocesans would tend to vary. While to some it would be more than clear that there could be no mercy in glossing over a sinful licence, a course which to the individual was at least dangerous, and to the community might as a precedent be fraught with immense possibilities of evil; to others the wider views would not so readily occur, and the pressure of facts in the individual case would seem to be of more irresistible moment. These would be painfully conscious of the actual complication with the secular law; of the many extenuations which could be pleaded for a passionate action; and of the remorse long since felt by the offending parties for those beginnings of evil which could not now be wiped away

⁴ Tertullian, *Ad Uxorem*, lib. ii. c. 1.

and made as though they had not been. A passage from Origen will be shortly alluded to in which he distinctly states that certain governors of the Church, or bishops, had taken the laxer line in such cases, "thus doing contrary to the Scripture." It is possible, therefore, that in the cases alluded to by Tertullian there may have been an instance or two not only of remarriage before the secular law, but of the retention of the parties in the communion of the Church by the local Christian authorities. Tertullian, however, does not say so; and the silence of Tertullian is not without its weight as an argument against the existence of such sanction in any of the cases to which he refers. All that is contained in Tertullian's statement, or can legitimately be inferred from it, amounts to this, that certain Christian women had availed themselves of the liberty of the secular law to contract second marriages after divorce.

The cause
which
justifies
dismissal is
post-nuptial
adultery.

To Tertullian the exceptional cause which sanctions putting away, although it does not sanction remarriage, is post-nuptial adultery. It will have been noticed in the passage cited from the *De Monogamia* that the equivalent of *πορνεία* employed by Tertullian is *adulterium*, a word indeed which, without explanation, might still have left room for doubt. But Tertullian is careful to explain exactly what he means by the word. He quotes as follows from S. Matthew v. 32, "'He who shall send away his wife, except for some cause of adultery, makes her to commit adultery: and whosoever marrieth her that is put away from her husband' of course 'committeth adultery.'" He then goes on to say: "Because neither can the divorced woman lawfully marry, and if she have committed any sin of that kind it admits not the title of adultery save on account of her matrimony, in that adultery is a crime incident to the marriage state."¹ In the text quoted the word *adulterium* occurs three times, being used once of the cause of separation, once of the character of the new marriage in the case of the woman put away, and once of the character of that marriage as it affects her second partner. To explain the use of the word in the last two cases Tertullian points out that

¹ Tertullian, *De Monogamia*, § 9.

it could only be adultery because the woman is already married, "in that adultery is a crime incident to the marriage state." The same limitation of the word must be taken to give the meaning as understood by Tertullian in the first case also. If a man send away his wife "for some cause of adultery," he sends her away, according to Tertullian, for "a crime incident to the marriage state."

Tertullian then is of opinion that a man may put away his wife for adultery or post-nuptial sin, but denies that he is at liberty to contract another marriage. Like the other early writers he is evidently of opinion that a man not only may put away his wife for the specified cause, but that he ought to do so. Addressing Marcion, who permitted no separation, he asks, "What is a husband, if in thy connexion, to do, supposing his wife to have committed adultery? Shall he retain her? But thine own Apostle suffers not 'the members of Christ' to be 'joined to a harlot.'" ¹ The inference clearly is that for the husband to continue in such a union is not only an uncalled-for concession, but an inadmissible sin. Presumably when the wife should cease to be 'a harlot' the husband might receive her who was still, in Tertullian's view, his wife; and in the *De Patientia* penitence and reconciliation are indicated as the rewards of patience. ² On the question of divorce by the woman Tertullian recognises that she can put away her husband, though his references appear to have rather in view the secular law, but, as we have seen, there can be no remarriage. This appears from the passage upon widows, already quoted, "the wife must still continue in peace with her departed husband, whom she will now have no power to put away; and if *she had, not even so might she marry again.*"

In the orthodox treatise *De Patientia*, Tertullian, as has just been noticed, expresses the view held by Hermas and S. Clement that a divorced partner may be restored upon penitence. Extolling the benefits of patient waiting he exclaims, "How much of benefit it confers upon both! it prevents the one from

¹ Tertullian, *Adversus Marcionem*, lib. iv. c. 34.

² *Ibid. De Patientia*, § 12.

becoming an adulterer, while the other it amends.”¹ This passage, if the reading be accepted, is also an important expression of Tertullian’s view of the character of the union resulting from remarriage after divorce; it is adultery. In some manuscripts, however, the reading *alterum ad alterum non facit* replaces the reading *alterum non adulterum facit*; in which case the sense would seem to be that patience “restrains the one from a second partner, while the other it amends.”

Summary
of the
views of
Tertullian.

Tertullian’s opinions may be summed up as follows: He understands our Lord to permit the husband to put away for *adulterium*; he implies in addressing Marcion that the husband is bound to put away a wife living in adultery, since he would otherwise partake of her sin; he admits that the wife is at liberty to put away her husband for the same cause; he understands by *adulterium* post-nuptial adultery, “a crime incident to the marriage state”; he is positive that there is no remarriage possible for either of the separated parties, and he assumes that such impossibility of remarriage is recognised without question by all Christians alike; and finally he is of opinion that one great advantage of abstinence from remarriage is that it often leads to the penitence and restoration of the offending husband or wife, which he evidently desires.

Origen.

The next great writer is also identified with the churches of the African continent. Origen, probably born at Alexandria in 185–6 A.D., the son of a Christian father, Leonides, who suffered martyrdom in the tenth year of Severus (202 A.D.), is an instance of an early Christian teacher who had never professed another faith. He would therefore be well acquainted with the traditional feeling of the Christian community. At the same time he was the boldest and most independent of thinkers.

The in-
stances of
remarriage
permitted
by bishops.

A long passage is quoted above from his commentary on S. Matthew xix. He points out that the provisions of the Mosaic code which permitted divorce to the Jews were “in the way of condescension to the weakness of those for whom they were made.” He is disposed to think that this principle of concession may perhaps be entertained even in the Christian Church. If so, there may be some excuse for certain governors of the Church

¹ Tertullian, *De Patientia*, § 12.

who have gone so far as to permit a person to marry a woman in the lifetime of her husband, "thus doing contrary to the Scripture," and "contrary to what was enacted and written from the beginning." In this passage we have the second mention in Christian literature of actual instances of remarriage after divorce, and this time the remarriages have been with the permission of the bishops. The divorced parties thus allowed to marry were women; but it is not stated whether they were innocent or guilty of the adultery, if adultery had been the ground (from the Christian point of view) of the separation, or whether they were the repudiators or the repudiated, if the ground of divorce had been one admitted by the Roman law, but unrecognised by Christianity. But whatever the ground of divorce, the remarriages and the episcopal permission of them had been facts. They are, however, to be mentioned as facts of the most exceptional character, and only to be understood at all by the extension to the Christian Church of the principle of concessions to hard hearts. The rule of the marriage of Christians is "that which was enacted and written from the beginning." Remarriage following divorce is "contrary to the Scripture." He is commenting on the very passage of Scripture on which so much stress has been laid (S. Matt. xix. 9), but he derives from it no support of these remarriages. If they are to be justified, it must be on the principle of concession to men's hardness of heart. Yet our Lord had not adopted the Mosaic code. Adultery is the ground of divorce, a crime which under the Mosaic code was punished by stoning. "But," Origen sums up, "as the woman is an adulteress though she seem to be married to a husband, if her former husband yet live; so also the man who seems to marry one put away does not so much marry, according to our Saviour's decision, as commit adultery."

Remarriage
after
divorce is
adultery.

Origen's authority, therefore, is distinctly against remarriage, notwithstanding the hint thrown out about the possibility of concession to hard hearts. At the same time his statement is undeniable testimony to the fact that certain divorced women had remarried, and that certain bishops had permitted such remarriage. It is possible, however, and indeed, as regards that

age, exceedingly probable that the divorced wives spoken of were the wives of non-Christian husbands who had put them away. If this was done before or at the baptism of the wives, the divorce would be regarded by the Church as affording no bar to remarriage, as we shall see in the next chapter. The marriage so severed would never have been Christian marriage at all.

πορνεία
means
adultery.

To Origen *πορνεία* meant post-nuptial sin, whatever else it might mean. His argument against the view that *λόγος πορνείας* was the equivalent of "some ground of uncleanness," the phrase of the Mosaic law, is that that phrase did not cover the sin of adultery, the punishment of which was otherwise provided. The phrases therefore could not be equivalent. In other words *πορνεία* included adultery. There was however a question whether *πορνεία* must not be taken to include a good deal besides adultery, as murder, witchcraft and theft.

S. Matthew
xix. 9.

The bearing of this passage on the verse to which it is a commentary must not be overlooked. Origen is willing to find any reasonable justification for the bishops who permitted remarriage. One such justification may be found in the principle of concession to hard hearts. Never is any reference made to the verse before him as having been understood by any to sanction such remarriage. His reading of the verse omits the clause *and shall marry another*, and is in no way concerned with remarriage. He apparently knows of no other reading.

Jewish and
Christian
discipline
contrasted.

In the passage quoted from the eleventh of the *Homilies on Leviticus*, Origen contrasts the rigour of the old law with the leniency of the Christian discipline, which no longer punished adultery by death or corporal punishment, but simply subjected the offender to a course of penance. Offenders should see to it that they fulfilled this penance; but too often, he says, "they delight to wallow in that mire in which they have been entangled."

S. Cyprian.

The next writer to be noticed is the great African Father S. Cyprian, who was probably converted when already an elderly man ("cui nondum forsitan crederetur supergressus vetustatis aetatem"—Pontius, *Vit. ad Don.* c. 2), but who became Bishop of Carthage in 248 A.D., not very long after his

conversion. His great experience of the conventional morality of the non-Christian population must have made him entirely sensible of the marked difference of the Christian tone, which, however, he simply accepts without comment. In the *Testimonia adversus Judæos* he quotes as a canon for the Church the rule of S. Paul that "the wife do not separate from her husband, but and if she depart, that she remain unmarried, or be reconciled to her husband, and that the husband do not send away the wife."¹ All this of course is opposed to the non-Christian practice of the day. There is no special allusion to adultery, but it is evidently understood that there are grounds on which the wife may legitimately require separation of life.

Before leaving S. Cyprian it is worth while to notice that to S. Augustine's mind the argument from S. Cyprian's silence in the matter of remarriage after divorce was a very strong one. He could only have been silent, thinks S. Augustine, because there was no cause to speak. In the treatise *De Fide et Operibus*, S. Augustine remarks, including his own times, that "the manners of wicked Christians, very bad as ere now they have been, seem to have been free from this particular mischief, of men marrying other men's wives, or women other women's husbands"; and then continues: "Now our reason for thinking that these things were not noticeable in the conduct of bad Christians from the first is that the blessed Cyprian in his *Epistle concerning the Lapsed*, in mournful reproof mentioning many things, which he says had deservedly kindled God's wrath, until He suffered His Church to be scourged with an intolerable persecution, makes no mention at all of these things. Yet this other circumstance, which, as he remarks, comes under the same head of immorality, he doth not at all pass in silence; viz., their joining in the bond of matrimony with unbelievers."²

S. Cyprian's
silence as to
remarriage
of the
divorced.

The treatise *De Disciplina et Bono Pudicitiae*, which used to be assigned to S. Cyprian, may next be noticed. It cites the teaching of our Lord as allowing a wife to be put away only for adultery.

"De Disci-
plina et
Bono
Pudicitiae."

¹ S. Cyprian, *Testimonia adversus Judæos*, lib. iii. c. 90.

² S. Augustine, *De Fide et Operibus*, § 35.

The
Apostolical
Canons.

No re-
marriage
after
divorce.

Council of
Eliberis.

Women
who have
causelessly
left their
husbands
for others
refused
communion
even at
death.

We may now pass on to the Apostolic Canons, a body of regulations of a date indeterminate, but certainly prior to Constantine. They have been commonly taken as of high authority in the Christian Church, and probably represent the voice of the third century. The 47th of these canons runs: "If any layman having put away his own wife, shall take another, or (if any one take) a woman divorced by another man, let him be excommunicated." This claims to be an authoritative utterance, and it visits all remarriage after divorce with excommunication. There is no exception, or hint of exception.

The citations of this period are concluded by certain canons of the Council of Eliberis or Elvira in Granada, which Hefele assigns to 305 A.D. or 306 A.D. Mr. Ffoulkes says of this Council that, "as Hosius of Corduba is placed second of the nineteen bishops attending it, its date cannot well have been earlier than 313 or later than 324." If the later date, which is the date assigned to it in its own acts (Era CCCLXII = A.D. 324), be accepted, the Council would properly fall in our next period. It has, however, no sign of recognition by secular authority, and, whatever its date, is in this respect on the same footing as all the Christian witnesses of the period preceding Constantine's conversion. Some of its canons are very important as regards the remarriage of converts, and will be cited later under that head. On the subject of the divorce and remarriage of persons united in Christian matrimony there are also some very clear pronouncements. The 8th canon strikes at the laxity of repudiation without cause: "Women who without previous cause have left their husbands and united themselves to others, are not to receive communion even at death." This canon deals with the whole fabric of divorce at will, whether the will of one party only, or mutual consent. The punishment for the offence of remarriage after such a divorce is the gravest known to the Christian Church: it is exclusion from the communion of the Church on earth without recognition even of death-bed repentance. The reconciliation of such penitents is left to God and to another world.

The 9th canon is as follows: "A woman baptized, who has

forsaken an adulterous husband also baptized, and is marrying another, must be forbidden to marry him; and if she so marry, she must not receive the communion till after the husband whom she has left be dead, unless extremity of sickness compel the indulgence." The Council makes it quite clear at starting that this canon refers only to those united in Christian marriage, both the husband who is forsaken, and the wife who forsakes, being baptized persons. The ground of desertion is the adultery of the husband; a ground, as we have seen, carrying little or no weight with it in the view of the Roman law or of the popular sentiment, but apparently a ground admitted by the Council as justifying the desertion of a Christian husband by a Christian wife. It does not however for a moment justify the wife's remarriage to another man, and such remarriage at once carries with it the sentence of excommunication. If while she is living in this unhallowed union her real husband die, then, notwithstanding the fault of its commencement, the existing union may be recognized, because its character is now changed. While her first husband was alive she was his wife, and could be no one else's; when he is dead she is as free as ever she was to contract a marriage, and if she elect as a Christian woman to continue the union which has already the sanction of the secular law it becomes Christian marriage, and she is again admissible to communion, her penitence for past sin being presupposed. If, however, while the union has still the adulterous character, she seem likely to die, then, notwithstanding the presumption that she lies dying in the home and with the surroundings of her adultery, she may be admitted to communion, it being always understood in cases of death-bed admissions to communion that the sin is first both repented of and repudiated. If she were not prepared to repudiate the connexion there would of course be no question of communion even at death.

A woman who divorces her husband for adultery and marries again.

The 64th Canon deals with the case of a woman who is in adultery because her partner is another woman's husband—"If any woman shall have continued in adultery with the husband of another until she come to die, it was resolved that neither at the last should communion be given her. If, how-

A woman who marries another woman's husband.

ever, she have left him, she may receive communion after ten years, if the lawful penance has been performed." The strictness in this case is very remarkable when seen in the light of the laxity of the Eastern churches at the close of the same century in the matter of the connection of a married man with an unmarried woman.

Obligation
to put away
an adulter-
ous wife.

The 65th Canon is noteworthy as shewing a very strong sense of the obligation to put away in the case of an adulterous wife. "If the wife of any *clericus* shall have committed adultery, and her husband shall have known that she was committing adultery, and shall not have immediately cast her forth, he is not to receive communion even at the last: lest from those who ought to be examples of right conversation there should seem to proceed the authoritative recognitions of crimes." It is startling to find here the infliction of the extreme penalty of excommunication without relaxation at the hour of death. To retain a woman who is sinning with another man is a crime; and for a clergyman to afford in his own person an example of this crime, which laymen might not be slow to follow, is a crime of the most heinous character. The canon must be understood to apply to the period of actual adultery when the indulgence of the husband would amount to actual connivance, and be responsible for the *confusio prolis*; it cannot be assumed from the canons that a penitent wife might not be received even by a *clericus*.

The obligation to put away an adulterous wife is not less forcibly expressed in the 70th Canon—"If a wife have committed adultery with the cognizance of the husband, it was resolved that communion is not to be accorded (to him) even at the last; but if he have left her (subsequently) he may receive the communion after ten years." Even a layman was to be visited with the extreme penalty of the Church if he failed to put away an adulterous wife when he knew of her adultery; but if he put her away subsequently the vigour of the Canon might in his case be relaxed, and ten years of exclusion from communion would suffice as a penance.

By the 78th Canon a baptized man who, being married, committed adultery with a Jewess, or with a heathen woman, was

to be excluded from communion. It was evidently not supposed that there was any obligation on the part of the wife to put away the adulterous husband; but the adulterous character of his sin was clearly recognised, a recognition which was not to be met with outside the Christian Church.

But not necessarily an adulterous husband, though his sin is visited with penalty.

The Council of Eliberis has thus some important decisions, which cast in an authoritative and responsible form the opinions which were doubtless commonly entertained in the Church of the third century. Not only may a husband put away his wife for adultery, but he is held bound to do so under the most stringent penalties if the adultery continue after he has knowledge of it. It appears to be recognised that a wife may put away her husband for adultery, but there is no sense of any obligation on her part to put him away, even although she be aware of the continuance of the sin. The crime which justifies putting away is distinctly post-nuptial adultery. A woman who puts away her husband is, however, directly forbidden to marry again.

We are now in a position to review the evidence of the whole period from the Ascension of our Lord to the conversion of Constantine. The results of the enquiry are not a little important.

1. It is agreed that a husband may put away his wife for *πορνεία*. Hermas, Tertullian, and the Council of Eliberis go farther, and *require* the husband to put away the wife if the adultery continue. S. Clement of Alexandria says that Holy Scripture only permits the putting away of a wife "on the ground of *πορνεία*." S. Justin Martyr, who makes no objection to the putting away of an adulterous husband, must be understood to admit the putting away of an adulterous wife. Origen says: "Our Saviour in no wise permitting dissolution of marriage for any other fault, but only for *πορνεία* found in the wife." On the other hand, no Christian writer of the first three centuries anywhere states or implies that a man may not put away his wife for *πορνεία*.

Husband may put away for *πορνεία*.

2. Some authorities insist that a man is *bound* to put away a wife who continues in her adultery. Hermas says: "If he know that his wife have sinned, and hath not done penance,

Husband
bound to
put away
for con-
tinuing
adultery.

but abideth in her fornication, and he still liveth with her as a husband, he will be guilty of her crime, and partaker of her adultery." Tertullian, addressing Marcion, says: "What is a husband in thy connexion to do, supposing his wife to have committed adultery? Shall he retain her? But thine own Apostle suffers not 'the members of Christ' to be 'joined to a harlot.' Christ therefore proves to be an assertor of the righteousness of divorce." The Council of Eliberis punishes a husband who retains an adulterous wife, knowing her to continue in her adultery, by exclusion from communion for life. Not even in the article of death may a husband thus guilty of connivance at adultery be restored. If, however, he be a layman, and leave his wife at some time subsequent to his connivance at her sin, ten years' penance will suffice. From the moral standpoint, the peculiar enormity of retaining a wife known to continue her adulterous relations presumably lies in the *confusio prolis*. No authority requires the woman to put away the man in like case. From the point of view of the secular law, the obligation to put away an adulterous wife brings the Christian practice into harmony with the *lex Julia de adulteriis cœercendis*. No Christian writer of the first three centuries is found to deny that it is the duty of the husband to put away an adulterous wife if she continue in her adultery.

Wife may
put away
for
adultery.

3. While the Roman Law and public opinion in the Roman Empire did not recognize any sufficient justification of divorce in the unfaithfulness of the husband, the Christian feeling characterised such unfaithfulness as adultery, and recognised the right of the wife to put away her husband for such adultery. S. Justin Martyr narrates without blame the history of the lady who put away her husband for practising and endeavouring to involve her in sins *παρὰ τὸν τῆς φύσεως νόμον*, a ground for putting away which, it may be noticed in passing, is recognised by the Canon Law of Europe generally, and in particular by the law of England, here derived from ecclesiastical sources. Tertullian understands that a woman has the same right to put away as a man, though he may be referring only to the secular law. Speaking of widows in the *De Monogamia*, he says, "She has heard no sentence of repudiation

from him, therefore she is not departed from him: she hath written him no bill of divorce, therefore she is still with him." In the *De Patientia* he speaks of "marriage being severed on that ground for which it is permissible, whether to the husband or to the wife." The Council of Eliberis punishes wives "who, *without previous cause*, have left their husbands, and united themselves to others." "A woman baptized, who has forsaken an adulterous husband also baptized," is not censured, but simply forbidden to marry again. No writer of the period denies that a woman may put away her husband for adultery.

4. No writer, however, will be found to contend that a woman is bound to put away her husband for adultery, as it is insisted that the husband is bound to put away the wife. The cases are obviously different. There is here no *confusio prolis*. The wife who continues with an adulterous husband is not "guilty of" his "crime and partaker of" his "adultery."

Wife not
bound to
put away
for
adultery.

The lady of S. Justin Martyr's narrative is an instance of the very rare cases in which the wife has to fear participation in crime. She felt herself bound to put away her husband accordingly. But in ordinary cases of the adultery of the husband, there is no early Christian teaching to the effect that the wife is under any obligation to put away the husband.

5. The passages which have been quoted throw light on the meaning attached to the word *πορνεία* in the early centuries of Christianity. Hermas says the husband is bound to put away the wife if she continue in her fornication (*ἐπιμένῃ τῇ πορνείᾳ αὐτῇς*), where the continuance precludes the idea of pre-nuptial sin, and then goes on to use *μοιχεία* as synonymous with *πορνεία*. The view of S. Clement of Alexandria that a penitent wife may be restored indicates that the sin was adultery. Pre-nuptial sin would already have been a thing past and gone at the time of its discovery. To Tertullian the cause which justifies putting away is *adulterium*, which he defines as "a crime incident to the marriage state." Origen says that *πορνεία* must not be taken to be identical with "some ground of uncleanness," because this phrase did not include adultery. *Πορνεία* then does include adultery. The writer of the *De Disciplina et Bono Pudicitiae*, whether

πορνεία
means
adultery.

S. Cyprian or not, says that our Lord gave answer that a wife was not to be dismissed, except for adultery (*non nisi ob adulterium*). The Council of Eliberis requires the husband to put away when the wife has been guilty of adultery (*moechata fuerit*). It was, then, generally understood in the first three centuries that the one ground which justified putting away was the ground of post-nuptial adultery.

πορνεία
never pre-
nuptial
unchastity.

6. No early writer can be cited as understanding that the admitted ground of putting away is pre-nuptial unchastity; nor is any instance of actual dismissal for that cause recorded.

But some-
times
figurative
adultery.

7. There is, however, a certain tendency in this period, as afterwards, to extend the meaning of *πορνεία* from the obvious signification of literal unchastity to various forms of figurative adultery. Thus Hermas says: "Not only is it adultery in those who join in polluting their own flesh, but he too who maketh an image committeth adultery." Origen says, "It may be asked, whether hereby he forbids putting away a wife, if she have been taken not in *πορνεία*, but in witchcraft, or in killing, in the absence of her husband, the child born to them, or in any sort of murder? Again, if she be caught in peculation, and in spoiling her husband's house, but not *πορνέουσα*?"

No
remarriage
after
divorce.

8. We come now to the point of most vital importance. When a wife or a husband has been put away, is a second marriage to be permitted to either or both of the parties? It is most significant that the testimony of the first three centuries affords no single instance of a writer who approves remarriage after divorce in any case during the lifetime of the separated partner, while there are repeated and most decided assertions of the principle that such marriages are unlawful. On the other hand Tertullian and Origen both mention instances of Christians who had availed themselves of the facilities afforded by the secular law to contract new marriages, and Origen says that the persons to whom he refers were permitted to marry by "certain governors of the Church." The various cases of divorce present such different features that they need to be considered in this connexion separately. We will take them in the following order. Is remarriage after divorce permitted

in the case (1) of the guilty wife, (2) of the guilty husband, (3) of the innocent wife, (4) of the innocent husband?

The remarriage of the guilty wife is abundantly condemned. The guilty wife. Hermas says, "It is commanded to you both to abide single, both husband and wife." S. Justin Martyr quotes, without excepting the guilty wife, as some would do, the words of our Lord: "He that marrieth one put away by another man committeth adultery." He continues: "They who under some human law contract bigamy are sinners in the account of our teacher." Athenagoras admits no second marriages. S. Clement of Alexandria writes: "For 'if one put away his wife, he *μοιχᾷται αὐτήν*;' i.e., compelleth her to commit adultery." He makes no exception. Again he mentions the permitted cause of putting away and the unlawfulness of remarriage in the same breath—"Thou shalt not put away a wife except on the ground of *πορνεία*"; and it (the Scripture) holds it adultery to marry during the lifetime of either of the separated parties." Tertullian says, "Neither can the divorced woman lawfully marry." Origen says the remarriage of the women of whom he speaks was "contrary to the Scripture," while asking if the case could be covered by the principle of concession to hard hearts. He concludes: "But as the woman is an adulteress, though she seem to be married to a husband, if her former husband yet live; so also the man who seems to marry one put away does not so much marry, according to our Saviour's decision, as commit adultery."

The 47th Apostolical Canon decrees that a layman who marries a woman "divorced by another man" is to be excommunicated. No writer asserts that it is lawful for a guilty wife to marry again during the lifetime of her husband.

9. The case of the husband guilty of adultery whom the wife has put away is not so often mentioned as that of the guilty wife put away by the husband. The guilty husband. Tertullian, who admits the wife's right to put away, admits no remarriage during the lifetime of the separated partner. The Council of Eliberis decrees that if the woman remarry, "she must not receive the communion till after the husband whom she has left be dead." He is then still her husband.

The innocent wife.

10. The case of the innocent wife is twofold. She may either be a wife put away by her husband causelessly, or a wife who has put away her husband for adultery.

(a) Repudiated.

(a) As regards a wife put away causelessly, some of the passages already quoted in the case of the guilty wife are here equally applicable. S. Justin Martyr, Athenagoras, S. Clement of Alexandria, Tertullian, and Origen are thus found to reject the remarriage of the wife causelessly divorced. It does not appear whether the women, of whom Origen says that they had remarried with the permission of the governors of the Church, were wives put away by their husbands with or without cause, or whether they had put away their husbands.

In the absence of definite pronouncements of Church authority individual prelates might be disposed to be very indulgent to women divorced without cause. It is, however, likely enough that Origen's instances were either cases coming under the *privilegium Paulinum*, which suffers remarriage after divorce upon conversion, or were mistakenly treated as being such cases. If so, these instances would have no bearing on the question of the indissolubility of *Christian* marriage, with which alone we are concerned in the present chapter.

(b) Repudiating.

(b) The other case is that of the innocent wife who has left her husband by reason of his adultery. S. Justin Martyr has no record of the remarriage of the lady whose case has been alluded to. Tertullian says of a widow, "Her departed husband, whom she will now have no power to put away; and if she had, not even so might she marry again." It is of the wife who leaves her husband on sufficient grounds that Tertullian says, "Christ . . . has both permitted putting away in that He has not altogether forbidden it, and has confirmed [the bond of] marriage in that He has . . . forbidden it to be severed."

The 9th Canon of Eliberis rules that "a woman baptized, who has forsaken an adulterous husband also baptized, and is marrying another, must be forbidden to marry him, and if she so marry, she must not receive the communion till after the husband whom she has left be dead, unless extremity of sickness compel the indulgence."

11. The next case is that of the innocent husband who has

put away an adulterous wife. In such a case Hermas says: The innocent husband "it is commanded to you both to abide single, both husband and wife." Athenagoras admits no remarriage. S. Clement of Alexandria, after reciting the admitted ground of putting away, says that "it is counted adultery to contract another marriage in the lifetime of either of the separated parties." Tertullian says the remarriage of a divorced wife "admits not the title of adultery save on account of her matrimony, in that adultery is a crime incident to the marriage state." The husband is therefore still her husband. The 47th Apostolical Canon rules: "If any layman having put away his own wife shall take another . . . let him be excommunicated."

No writer of the first three centuries is found to advocate or admit the remarriage of the innocent husband.

Reviewing all the cases of remarriage after divorce, we find that the writers and canons of the period which ends with Constantine's conversion do not approve of such remarriage in *any* case, and that there is considerable expression of disapproval in *every* case. When it is remembered that the whole tenor of the Roman Law and of Roman custom was against such strictness in any case, and that the adoption of such strictness in any case involved the conscious maintenance of a separatist cause, it is difficult to exaggerate the importance of the testimony before us. If the voice of the earliest Church is to be heard, Christian marriage is altogether indissoluble. Christian marriage indissoluble

12. Another question with regard to which Christian feeling was hardly less out of harmony with the prevailing tone was the question of the restoration of the penitent adulteress. Restoration of penitent adulteress permissible. Hermas says: "If her husband receive her not, he sinneth, and bringeth a great sin upon himself. It is his duty to receive the woman who hath done penance." S. Clement of Alexandria, condemning one who harboured an adulterous woman, says: "For, if he would not receive her, she must return to her husband." Tertullian extols patience as leading to penitence and reconciliation. No writer denies that a penitent wife may be received again, but Hermas says that it is not to occur "repeatedly; for to the servants of God there is but one solemn penance."

and even obligatory. 13. Hermas, as has been seen, distinctly asserts that the husband is bound in duty to receive the adulteress who returns to him a penitent.

Penitent husband may be received. 14, 15. From the statements regarding the wife, it follows that the penitent husband may be received by the wife, and ought to be so received.

Impenitent adulteress not to be received. 16. In no case, however, ought the husband to receive again an adulterous wife who has not forsaken her adultery. This follows from what has already been referred to in (2).

No similar rule as regards the husband. 17. On the other hand, as no obligation rests upon the wife to put away an adulterous husband (4), there appears to be no bar to her receiving her husband again, if she will, even though he continue in his sin.

S. Matthew xix. 9. 18. There is no instance during this period of any writer referring to S. Matthew xix. 9, as to an authority authorizing remarriage after divorce, or as to a difficult passage requiring to be explained away. S. Clement of Alexandria, in a somewhat free citation of the passage, explains *μοιχᾶται* as meaning "causes her to commit adultery." He thus renders out of place the clause, "and shall marry another," which his citation does not contain. Origen, commenting at length upon the passage, has the reading: "Whosoever shall put away his wife, saving for the cause of fornication, maketh her to commit adultery." He knows nothing of the clause, "and shall marry another." In commenting on the passage he paraphrases as follows: "But as the woman is an adulteress, though she can be married to a husband, if her former husband yet lives, so also the man who seems to marry one put away does not so much marry, according to our Saviour's decision, as commit adultery."

Athenagoras refers to the verse without mentioning the exception for *πορνεία*, and employs his reference for the express purpose of proving that any repetition of marriage is adulterous.

B. *From Constantine to Justinian* (314 A.D.—527 A.D.).

COUNCIL OF ARLES (314 A.D.).

*Canon 10.*¹

De his qui conjuges suas in adulterio deprehendunt, et iidem sunt adolescentes fideles, et prohibentur nubere, placuit ut in quantum possit consilium eis detur, ne viventibus uxoribus suis, licet adulteris, alias accipiant.

COUNCIL OF ARLES (?).

*Canon 24*² (so-called).

Placuit ut quantum potest inhibeat viro, ne dimissa uxore rixoso liceat, ut aliam ducat super eam. Quicumque autem hoc fecerit alienus erit a catholica communione.

COUNCIL OF ANCYRA (314 A.D.).

*Canon 20.*³

Ἐάν τις γυνή μοιχευθῇ, ἣ μοιχεύσῃ τις, ἐν ἐπτά ἔτεσι δοκεῖ αὐτὸν τοῦ τελείου τυχεῖν, κατὰ τοὺς βαθμοὺς τοὺς προάγοντας.

COUNCIL OF NEO-CAESAREA (314 A.D.—325 A.D.).

*Canon 8.*⁴

Γυνή τις μοιχευθεῖσα λαϊκοῦ ὄντος, ἐὰν ἐλεγχθῇ φανερώς, ὁ τοιοῦτος εἰς ὑπερησίαν ἐλθεῖν οὐ δύναται. Ἐὰν δὲ καὶ μετὰ τὴν χειροτονίαν μοιχευθῇ, ὀφείλει ἀπολῆσαι αὐτήν. Ἐὰν δὲ συζῇ, οὐ δύναται χεσθαι τῆς ἐγχειρωθείσης αὐτῇ ὑπηρεσίας.

LACTANTIUS.

Epitome, c. lxvi. (alias c. viii.).⁵

Teneatur ergo in omnibus vitae officiis, teneatur in matrimonio. Non enim satis est, si alieno toro, aut lupanari abstineas. Qui habet conjugem nihil quaerat extrinsecus sed contentus ea sola, casti et continentis cubilis sacramenta custodiat. Adulter enim Deo est perinde ac incestus, qui abjecto jugo vel in liberam vel in servam propterea voluptate luxuriat. Sed sicut foemina castitatis vinculis obligata est, ne alium concupiscat, ita vir eadem lege teneatur coniugium Deus virum et uxorem unius corporis compage solidavit.

¹ Mansi, tom. ii. p. 472.² *Ibid.* tom. ii. p. 474.³ *Ibid.* tom. ii. p. 520.⁴ *Ibid.* tom. ii. p. 542.⁵ Migne's Ed. tom. i. p. 1080.

Ideo praecepit, non dimitti uxorem, nisi crimine adulterii relictam, ut nunquam conjugalis foederis vinculum, nisi quod perfidia ruperit, resolvatur. Illud quoque ad consummandam pudicitiam jungitur ut non modo peccatum absit, verum etiam cogitatio.

*Divinarum Institutionum adversus Gentes, lib. vi. cap. 23.*¹

Haec sunt quae ad continentiam praecipuntur a Deo. Sed tamen, ne quis divina praecepta circumscribere se putet posse, adduntur illa, ut omnis calumnia et occasio fraudis removeatur; adulterum esse, qui a marito dimissam duxerit, et eum, qui praeter crimen adulterii uxorem dimiserit ut alteram ducat. Dissociari enim corpus et distrahi Deus noluit.

S. BASIL.

*Ethica (Moralia).*²

Regula 73.

Cap. I.

"Οτι οὐ δεῖ ἄνδρα ἀπὸ γυναικὸς ἢ γυναῖκα ἀπὸ ἀνδρὸς χωρίζεσθαι, εἰ μὴ τις ἂν ἐπὶ πορνείᾳ ἀλῶ ἢ εἰς τὴν θεοσέβειαν κωλύται.³

Cap. II.

"Οτι οὐκ ἔξεστι τῇ ἀπολύσαντι τὴν ἑαυτοῦ γυναῖκα γαμεῖν ἄλλην οὔτε τὴν ἀπολελυμένην ἀπὸ ἀνδρὸς ἑτέρῳ γαμεῖσθαι.

Κεφάλ. β'.

MATΘΑΙΟΣ. Λέγω δὲ ὑμῖν ὅτι ὃς ἂν ἀπολύσῃ τὴν γυναῖκα αὐτοῦ, εἰ μὴ ἐπὶ πορνείᾳ, καὶ γαμήσῃ ἄλλην, μοιχᾶται· καὶ ὁ ἀπολελυμένην γαμήσας μοιχᾶται.

*Hexaemeron, vii. § 5.*⁴

Οἱ ἄνδρες ἀγαπᾶτε τὰς γυναῖκας, καθὼς ὑπερόριοι ἀλλήλοις πρὸς κοινωνίαν γάμου συνέλθητε. Ὁ τῆς φύσεως δεσμός, ὁ διὰ τῆς εὐλογίας ζυγός, ἔνωσις ἔστω τῶν διεστώτων. . . . καθὼς τραχὺς ἦ, καθὼς ἄγριος τὸ ἦθος ὁ σύννοικος ἀνάγκη φέρειν τὴν ὁμόζυγα, καὶ ἐκ μηδεμιᾶς προφάσεως καταδέχεσθαι τὴν ἔνωσιν διασπῆν. Πλήκτης; Ἀλλ' ἀνὴρ. Πάροινος; Ἀλλ' ἡνωμένος κατὰ τὴν φύσιν. Τραχὺς καὶ δυσάρεστος; Ἀλλὰ μέλος ἤδη σὸν, καὶ μελῶν τὸ τιμιώτατον.

¹ Migne's Ed. tom. i. p. 720.

² *Ibid.* tom. iii. p. 849.

³ The passages quoted to support this are :

S. Matt. v. 31, 32 ; S. Luke xiv. 26 ; S. Matt. xix. 9 ; 1 Cor. vii. 10, 11.

⁴ Migne's Ed. tom. i. p. 160.

Canon 9 (*Epistle* 188).¹

Ἡ δὲ τοῦ κυρίου ἀπόφασις, κατὰ μὲν τὴν τῆς ἐννοίας ἀκολουθίαν, ἐξ ἑαυτοῦ καὶ ἀνδράσι καὶ γυναιξὶν ἀρμόζει, περὶ τοῦ μὴ ἐξεῖναι γάμον ἐξίστασθαι, παρεκτὸς λόγον πορνείας. Ἡ δὲ συνήθεια οὐχ οὕτως ἔχει· ἀλλ' ἐπὶ μὲν τῶν γυναικῶν πολλὴν εὐρίσκομεν ἀκριβολογίαν, τοῦ μὲν Ἀποστόλου λέγοντος· "Ὅτι ὁ κολλώμενος τῇ πόρνῃ, ἐν σῶμά ἐστι· τοῦ δὲ Ἱερεμίου· "Ὅτι εἴαν γένηται γυνὴ ἀνδρὶ ἐτέρῳ, οὐκ ἐπιστρέφει πρὸς τὸν ἄνδρα αὐτῆς, ἀλλὰ μαινομένη μιανθήσεται· καὶ πάλιν· "Ὁ ἔχων μοιχαλίδά ἄφρων καὶ ἀσεβής. Ἡ δὲ συνήθεια καὶ μοιχεύοντας ἄνδρας καὶ ἐν πορνείαις ὄντας κατέχεσθαι ὑπὸ γυναικῶν προστάσσει. "Ὡστε ἡ τῷ ἀφειμένῳ ἀνδρὶ συνοικοῦσα οὐκ οἶδα εἰ δύναται μοιχαλὶς χρηματίζειν. Τὸ γὰρ ἔγκλημα ἐνταῦθα τῆς ἀπολυσάσης τὸν ἄνδρα ἀπτεται, κατὰ ποίαν αἰτίαν ἀπέστη τοῦ γάμου. Εἴτε καὶ τυπτομένη, μὴ φέρονσα τὰς πληγὰς, ὑπομένειν ἐχρήν μᾶλλον ἢ διαξευχθῆναι τοῦ συνοικοῦντος· εἴτε τὴν εἰς τὰ χρήματα ζημίαν μὴ φέρονσα, οὐδὲ αὕτη ἢ πρόφασις ἀξιόλογος. Εἰ δὲ διὰ τὸ ἐν πορνείᾳ αὐτὸν ζῆν, οὐκ ἔχομεν τοῦτο ἐν τῇ συνήθειᾳ τῇ ἐκκλησιαστικῇ τὸ παρατήρημα· ἀλλὰ καὶ ἀπύστων ἀνδρὸς χωρίζεσθαι οὐ προσετάχθη γυνή, ἀλλὰ παραμένειν, διὰ τὸ ἁδῆλον τῆς ἐκ βάσεως. Τί γὰρ οἶδας, γύναι, εἰ τὸν ἄνδρα σώσεις; "Ὡστε ἡ καταλιπούσα, μοιχαλὶς, εἰ ἐπ' ἄλλον ἦλθεν ἄνδρα. Ὁ δὲ καταλειφθεὶς συγγνωστός ἐστι, καὶ ἡ συνοικοῦσα τῷ τοιούτῳ οὐ κατακρίνεται. Εἰ μέντοι ὁ ἀνὴρ, ἀποστὰς τῆς γυναικὸς, ἐπ' ἄλλην ἦλθε, καὶ αὐτὸς μοιχὸς, διότι ποιεῖ αὐτὴν μοιχευθῆναι· καὶ ἡ συνοικοῦσα αὐτῷ μοιχαλὶς, διότι ἀλλότριον ἄνδρα πρὸς ἑαυτὴν μετέστησεν.

Canon 21 (*Epist.* 199).²

Εἰ ἀνὴρ γυναικὶ συνοικῶν, ἐπειδὴν, μὴ ἀρκεσθεὶς τῷ γάμῳ, εἰς πορνείαν ἐκπέσῃ πόρνον κρίνομεν τὸν τοιούτον· καὶ πλείον αὐτὸν παρατείνομεν ἐν τοῖς ἐπιτιμίοις· οὐ μέντοι ἔχομεν κανόνα, τῷ τῆς μοιχείας αὐτὸν ἰπαγαγεῖν ἐγκλήματι, εἴαν εἰς ἐλευθέραν γάμον ἢ ἁμαρτίαν γένηται· διότι ἡ μοιχαλὶς μὲν, Μαινομένη, φησὶ, μιανθήσεται, καὶ οὐκ ἀναστρέφει πρὸς τὸν ἄνδρα αὐτῆς· καὶ, Ὁ κατέχων μοιχαλίδά ἄφρων καὶ ἀσεβής· ὁ μέντοι πορνεύσας οὐκ ἀποκλεισθήσεται τῆς πρὸς γυναῖκα ἑαυτοῦ συνοικίσεως. "Ὡστε ἡ μὲν γυνὴ ἀπὸ πορνείας ἐπαυιόντα τὸν ἄνδρα αὐτῆς παραδέξεται, ὁ δὲ ἀνὴρ τὴν μιανθεῖσαν τῶν οἴκων ἑαυτοῦ ἀποπέμψει. καὶ τούτων δὲ ὁ λόγος οὐ ῥήδιος· ἡ δὲ συνήθεια οὕτω κεκράτηκε.

¹ Migne's Ed. tom. iv. p. 672.² *Ibid.* tom. iv. p. 721.

*Canon 31 (Epist. 199).*¹

Ἡ ἀναχωρήσαντος τοῦ ἀνδρὸς, καὶ ἀφανοῦς ὄντος, πρὸ τοῦ πεισθῆναι περὶ τοῦ θανάτου αὐτοῦ, ἐτέρῳ συνοικήσασα μοιχᾶται.

*Canon 36 (Epist. 199).*²

Στρατιώτιδες, αἱ τῶν ἀνδρῶν ἀφανῶν ὄντων γαμηθεῖσαι, τῇ αὐτῇ ὑπόκεινται λόγῳ, ὥπερ ἂν καὶ αἱ διὰ τὴν ἀποδημίαν τῶν ἀνδρῶν μὴ ἀναμείναςαι τὴν ἐπάνοδον· πλὴν ἔχει τινὰ συγγνώμην τὸ πρᾶγμα ἐνταῦθα, διὰ τὸ μᾶλλον πρὸς θάνατον εἶναι τὴν ὑπόνοιαν.

*Canon 39 (Epist. 199).*³

Ἡ τῷ μοιχῷ συζῶσα μοιχαλὶς ἐστὶ πάντα τὸν χρόνον.

*Canon 46 (Epist. 199).*⁴

Ἡ δὲ τῷ καταλειφθέντι πρὸς καιρὸν παρὰ τῆς γυναικὸς κατὰ ἄγνοιαν γημαμένη, εἴτα ἀφεθείσα, διὰ τὸ ἐπανελθεῖν πρὸς αὐτὸν τὴν προτέραν, ἐπόρνευσε μὲν, ἐν ἀγνοίᾳ δέ. Γάμου οὖν οὐκ εἰρχθήσεται. Κάλλιον δέ, ἐὰν μείνῃ οὕτως.

*Canon 48 (Epist. 199).*⁵

Ἡ δὲ ἐγκαταλειφθείσα παρὰ τοῦ ἀνδρὸς κατὰ τὴν ἐμὴν γνώμην μένειν ὀφείλει. Εἰ γὰρ ὁ Κύριος εἶπεν ὅτι Ἐάν τις καταλίπῃ γυναῖκα ἐκτὸς λόγου πορνείας ποιεῖ αὐτὴν μοιχᾶσθαι· ἐκ τοῦ μοιχαλίδα αὐτὴν ὀνομάσαι ἀπέκλεισεν αὐτὴν τῆς πρὸς ἕτερον κοινωνίας. Πῶς γὰρ δύναται ὁ μὲν ἀνὴρ ὑπεύθυνος εἶναι, ὡς μοιχείας αἴτιος, ἡ δὲ γυνὴ ἀνέγλητος εἶναι, ἡ μοιχαλὶς παρὰ τοῦ Κυρίου διὰ τὴν πρὸς ἕτερον ἄνδρα κοινωνίαν προσαγορευθεῖσα.

*Canon 58 (Epist. 217).*⁶

Ὁ μοιχεύσας ἐν ιε' (15) ἔτεσιν ἀκοινωνήτος ἔσται τῶν ἁγιασμάτων· ἐν τέσσαρσι μὲν προσκλαίων ἔτεσιν, ἐν πέντε δὲ ἀκροώμενος· ἐν τέσσαρσιν ὑποπίπτων, ἐν δυσὶ συνεστὼς ἄνευ κοινωνίας.

*Canon 77 (Epist. 217).*⁷

Ὁ μέντοι καταλιμπάνων τὴν νομίμως αὐτῷ συναφθεῖσαν γυναῖκα καὶ ἑτέραν συναγόμενος κατὰ τὴν τοῦ Κυρίου ἀπόφασιν τῷ τῆς μοιχείας ὑπόκειται κρίματι. Κεκανόνισται δὲ παρὰ τῶν πατέρων ἡμῶν τοὺς τοιούτους ἐνιαυτὸν προσκλαίειν, διετίαν ἐπακροᾶσθαι, τριετίαν ὑποπίπτειν· τῷ δὲ ἐβδόμῳ συνίστασθαι τοῖς πιστοῖς· καὶ οὕτω τῆς προσφορᾶς καταξιοῦσθαι ἐὰν μετὰ δακρύων μετανοήσωσιν.

¹ Migne's Ed. tom. iv. p. 728.² *Ibid.* tom. iv. p. 728.³ *Ibid.* tom. iv. p. 728.⁴ *Ibid.* tom. iv. p. 729.⁵ *Ibid.* tom. iv. p. 732.⁶ *Ibid.* tom. iv. p. 797.⁷ Migne's Ed. tom. iv. pp. 804-5.

De Virginitate, 39. (Περὶ τῆς ἐν παρθενίᾳ ἀληθοῦς ἀφθορίας.)¹

Εἰ δὲ ὁ γάμος οὗτος τοῖς μάρτυσι καὶ ταῖς προόδοις καὶ πᾶσι περιφανῆς, οὐκ ἀπέθανε δὲ, φημὶ, ὁ ἀνὴρ αὐτῆς· μοιχεύεται οὖν ἡ τοιαύτη ζῶντος τοῦ ἀνδρὸς διὰ βίον μοιχευομένη· μᾶλλον δὲ οἱ ἡδονῆς μὲν ἀπόλαυσιν ἀκολάστως πορνεύουσα, διὰ δὲ τὸ ζῆν τὸν ἄνδρα παρανόμως μοιχεύουσα.

S. EPIPHANIUS.

Panarion, lix. cap. 4.²

Ἐξεστί δὲ τῷ λαῷ οἱ ἀσθενείαν διαβαστάζεσθαι, καὶ μὴ δυνηθέντας ἐπὶ τῇ πρώτῃ γαμετῇ στήναι, δευτέρᾳ μετὰ θάνατον τῆς πρώτης συναφθῆναι. Καὶ ὁ μὲν μίαν ἐσχληκῶς ἐν ἐπαίνῳ μέizonι καὶ τιμῇ παρὰ πᾶσιν ἐκκλησιαζομένοις ἐννύπτει· ὁ δὲ μὴ δυνηθείς τῇ μιᾷ ἀρκεσθῆναι τελευτησάσῃ ἔνεκεν τινος προφάσεως, πορνείας ἢ μοιχείας, ἢ κακῆς αἰτίας χωρισμοῦ γενομένου, συναφθέντα δευτέρᾳ γυναικὶ, ἢ γυνὴν δευτέρῳ ἀνδρὶ, οὐκ αἰτιάται ὁ θεῖος λόγος, οὐδὲ ἀπὸ τῆς Ἐκκλησίας καὶ τῆς ζωῆς ἀποκηρύττει, ἀλλὰ διαβαστάζει διὰ τὸ ἀσθενές· οὐχ ἵνα δύο γυναῖκας ἐπὶ τὸ αὐτὸ σχῇ ἔτι περιούσης τῆς μιᾶς, ἀλλ' ἀπὸ μιᾶς ἀποσχεθεὶς, δευτέρᾳ, εἰ τύχοιεν, νόμῳ συναφθῆναι. Ἐλεεῖ τοῦτον ὁ ἅγιος λόγος καὶ ἡ ἀγία Θεοῦ Ἐκκλησία· μάλιστα εἰ τυγχάνει ὁ τοιοῦτος τὰ ἄλλα εὐλαβῆς, καὶ κατὰ νόμον Θεοῦ πολιτευόμενος.

S. GREGORY NAZIANZEN.

Oratio, xxxvii. §5 (in S. Matt. xix. 1-12).³

Τὸ ἐρώτημα ὃ ἠρώτησας, τοῦτο σωφροσύνην τιμᾶν μοι δοκεῖ, καὶ ἀπόκρισιν ἀπαιτεῖν φιλάνθρωπον· σωφροσύνην περὶ ἣν ὁρῶ τοὺς πολλοὺς κακῶς διακειμένους, καὶ τὸν νόμον αὐτῶν ἄνιστον, καὶ ἀνόμαλον. Τί δήποτε γὰρ, τὸ μὲν θῆλυ ἐκόλασαν, τὸ δὲ ἄρρεν ἐπέτρεψαν; καὶ γυνὴ μὲν κακῶς βουλευσταμένη περὶ κοίτην ἀνδρὸς μοιχεύεται, καὶ πικρὰ ἐντεῦθεν τὰ τῶν νόμων ἐπιτίμια· ἀνὴρ δὲ καταπορνεύων γυναῖκος, ἀνείθυνος; Οὐδέχομαι ταύτην τὴν νομοθεσίαν, οὐκ ἐπαίνῳ τὴν συνήθειαν. Ἄνδρες ἦσαν οἱ νομοθετοῦντες, διὰ τοῦτο κατὰ γυναικῶν ἡ νομοθεσία· ἐπεὶ καὶ τοῖς πατράσιν ὑπ' ἐξουσίαν δεδώκασιν τὰ τέκνα, τὸ δὲ ἀσθενέστερον, ἀθεράπευτον ἔιασαν. Θεὸς δὲ οὐχ οὕτως.

Πῶς οὖν σὺ σωφροσύνην μὲν ἀπαιτεῖς, οὐκ ἀντεισφέρεις δὲ; πῶς, ὃ μὴ δίδως, αἰτεῖς; πῶς, ὁμοτίμον σῶμα ὦν, ἀνίσως νομοθετεῖς; Εἰ δὲ τὰ χεῖρω σκοπεῖς· ἡμάρτεν ἡ γυνή, τοῦτο καὶ ὁ Ἀδάμ· ἀμφοτέρους ὁ ὄφεις ἠπάτησεν. Οὐ τὸ μὲν ἀσθενέστερον εἰρέθη, τὸ δὲ ἰσχυρότερον.

¹ Migne's Ed. tom. i. p. 748.

² *Ibid.* tom. i. pp. 1024-5.

³ *Ibid.* tom. ii. p. 289.

Ἄλλὰ τὰ βελτίω λογίξῃ; ἀμφοτέρους σώζει Χριστὸς τοῖς πάθεσιν. Ὑπὲρ ἀνδρὸς σὰρξ ἐγένετο; τοῦτο καὶ ὑπὲρ γυναικός. Ὑπὲρ ἀνδρὸς ἀπέθανε; καὶ ἡ γυνὴ τῷ θανάτῳ σώζεται. Ἐκ σπέρματος Δαβὶδ ὀνομάζεται· τιμᾶσθαι ἴσως οἶε τὸν ἄνδρα; ἀλλὰ καὶ ἐκ Παρθένου γεννᾶται, τοῦτο καὶ ὑπὲρ γυναικῶν. Ἔσονται μὲν οὖν οἱ δύο, φησὶν, εἰς σάρκα μίαν, καὶ ἡ μία σὰρξ ἐχέτω τὸ ὁμότιμον. Παῦλος δὲ καὶ τῷ ὑποδείγματι τὴν σωφροσύνην νομοθετεῖ. Πῶς, καὶ τίνα τρόπον; Τὸ μυστήριον τοῦτο μέγα ἐστίν· ἐγὼ δὲ λέγω εἰς Χριστὸν καὶ εἰς τὴν Ἐκκλησίαν. Καλὸν τῇ γυναικὶ Χριστὸν αἰδεῖσθαι διὰ τοῦ ἀνδρός· καλὸν καὶ τῷ ἀνδρὶ τὴν Ἐκκλησίαν μὴ ἀτιμάζειν διὰ τῆς γυναικός. Ἡ γυνή, φησὶν, ἵνα φοβῇται τὸν ἄνδρα· καὶ Χριστὸν γάρ. Ἀλλὰ καὶ ὁ ἀνὴρ, ἵνα περιέβῃ τὴν γυναῖκα· καὶ γὰρ Χριστὸς τὴν Ἐκκλησίαν. Μᾶλλον δ' ἔτι καὶ προσφιλοπονήσωμεν τῷ ῥήτῃ.

Ἀμελγε γάλα καὶ ἔσται βούτυρον· ἐξέταξε καὶ τυχὸν ἂν εὔροις τι ἐν αὐτῷ τροφιμώτερον. Δοκεῖ μοι γὰρ παραιτεῖσθαι τὴν διγαμίαν ἐνταῦθα ὁ λόγος. Εἰ μὲν γὰρ δύο Χριστοὶ, δύο καὶ ἄνδρες, δύο καὶ γυναῖκες· εἰ δὲ εἰς Χριστὸς, μία κεφαλὴ τῆς Ἐκκλησίας, καὶ μία σὰρξ· ἡ δευτέρα δὲ ἀποπτύεσθω. Τὸ δεύτερον δὲ ἂν κωλύσῃ, τοῦ τρίτου τίς λόγος; Τὸ πρῶτον νόμος, τὸ δεύτερον συγχώρησις, τὸ τρίτον παρανομία. Ὁ δὲ ὑπὲρ τοῦτο, χοιρώδης, οἷος οὐδὲ πολλὰ ἔχων τῆς κακίας τὰ παραδείγματα. Ὁ μὲν νόμος κατὰ πᾶσαν αἰτίαν τὸ ἀποστάσιον δίδωσι· Χριστὸς δὲ οὐ κατὰ πᾶσαν αἰτίαν· ἀλλὰ συγχωρεῖ μὲν μόνον χωρίζεσθαι τῆς πόρνῃς, τὰ δὲ ἄλλα πάντα φιλοσοφεῖν κελεύει. Καὶ τὴν πόρνην, ὅτι νοθεύει τὸ γένος· τὰ δ' ἄλλα πάντα καρτερῶμεν καὶ φιλοσοφῶμεν· μᾶλλον δὲ καρτερεῖτε καὶ φιλοσοφεῖτε, ὅσοι τὸν τοῦ γάμου ζυγὸν ἐδέξασθε. Ἐὰν ἐπιγραφὰς ἰδῇς ἢ ὑπογραφὰς, ἀποκόσμησον· κἂν γλῶσσαν προπετῇ, σωφρόνισον· ἂν γέλῳτα πορνικὸν, κατηφῇ ποιήσον· ἂν δαπάνην, ἢ ποτὸν ἄμετρον, σύστειλον· ἂν προόδους ἀκαίρους, πέδησον· ἂν ὀφθαλμὸν μετέωρον, κόλασον. Μὴ τέμῃς δὲ προπετῶς, μὴ χωρίσης. Ἀδηλον, τί κινδυνεύει, τὸ τέμνον, ἢ τὸ τεμνόμενον. Ἡ πηγὴ, φησὶ, τοῦ ὕδατος ἔστω σοι ἰδία, καὶ μηδεὶς ἀλλότριος μετασχέτω σοι· καὶ, Πῶλος σῶν χαρίτων, καὶ ἔλαφος σῆς φιλίας ὁμιλείτω σοι. Σὺ τοίνυν μὴ γίνου ποταμὸς ἀλλότριος, μηδὲ ἄλλαις ἀρέσκειν σπούδαζε μᾶλλον, ἢ τῇ σῇ γυναικί. Εἰ δὲ ἀλλαχοῦ φέρῃ, καὶ τῷ σῷ μέλει νομοθετεῖς τὴν ἀσέλγειαν. Οὕτω μὲν ὁ Σωτήρ.

*Epistle 144. (To Olympius.)*¹

Ἐγὼ δὲ ἡδιστα ἂν γνώμην ἔδωκα τῷ νιῷ Οὐρηριανῷ πολλὰ τῶν ἐν μέσῳ παραδραμεῖν, ἐπὶ τῷ μὴ κυρῶσαι τὸ ἀποστάσιον, ὃ τοῖς ἡμετέροις ἀπαρέσκει πάντως νόμοις, κἂν οἱ Ῥωμαίων ἐτέρως κρίνουσι.

¹ Migne's Ed. tom. iii. pp. 245, 248.

CONSTITUTIONES APOSTOLICAE, lib. iii. c. 1.¹

Εἰ δέ τις νεωτέρα ὀλίγον χρόνον σὺν τῇ ἀνδρὶ ποιήσασα, καὶ ἀποβαλοῦσα αὐτὸν διὰ τελευτῆς, ἢ δι' ἀφορμῆς τινος ἑτέρας, καὶ μείνῃ ἐφ' ἑαυτῆς, δῶρον ἔχουσα χηρείας, μακαρία εὔρεθήσεται.

Ἡ τοιαύτη μαρτύριον λαβοῦσα τιμηθήσεται, κλέος ἔχουσα καὶ παρὰ ἀνθρώποις ἐπὶ γῆς, καὶ παρὰ Θεῷ ἐν οὐρανοῖς τὸν αἰώνιον ἔπαινον.

S. ASTERIUS, BISHOP OF AMASEA.

*Homily V. on S. Matthew xix.*²

Οἱ δὲ ἀλλήλοις συναφθέντες, οὐκ ἔτι εἰσὶ δύο, ἀλλὰ σὰρξ μία· ὥστε ὁ συνέζευξεν ὁ Θεὸς, ἄνθρωπος μὴ χωριζέτω.

Ἐλέχθη μὲν ταῦτα τοῖς Φαρισαίοις τότε· ἀκούσατε δὲ νῦν, οἱ τούτων κάπηλοι, καὶ τὰς γυναῖκας, ὡς ἱμάτια, εὐκόλως μετενδυόμενοι· οἱ τὰς παστὰδας πολλάκις καὶ ῥαδίως πηγνύντες, ὡς πανηγύρεως ἐργαστήρια· οἱ τὰς εὐπορίας γαμοῦντες, καὶ τὰς γυναῖκας ἐμπορευόμενοι· οἱ μικρὸν παροξυνόμενοι, καὶ εὐθὺς τὸ βιβλίον τῆς διαιρέσεως γράφοντες· οἱ πολλὰς χήρας ἐν τῷ ᾧ ἔτι καταλιμπάνοντες. Πείσθητε, ὅτι γάμος θανάτῳ μόνῳ καὶ μοιχείᾳ διακόπτεται.

Οὐ γὰρ, ὥσπερ ἐπὶ τῶν ἐταιρίδων, ὀλίγος ἡμερῶν ἀριθμὸς πειράζει τὴν συμβίωσιν, καὶ μόνην θηρεύει ἡδοιγὴν, οὕτως ἔστι καὶ ἐπὶ τῶν νόμῳ καὶ θεσμῷ τελουμένων· ἀλλὰ πᾶν τοῦναντίον, ὃ ἄνθρωπε, μία τις ἔνωσις γίνεται καὶ σώματος καὶ ψυχῆς, ὡς καὶ τὸ ἦθος τῇ ᾧθει συνακιρνᾶσθαι, καὶ τὴν σάρκα τῇ σαρκὶ τρόπον τινὰ συνδέεσθαι. πῶς οἶν ἀπαθῶς διατέμνῃ; πῶς εὐκόλως καὶ χωρὶς ἀλγηδόνης ἀνάχωρεῖς, βίον κοινωνὸν λαβὼν, οὐκ ὀλίγων ἡμερῶν ὑπερήρετιν, τὴν ἀδελφὴν καὶ γυναῖκα;

*Homily V. on S. Matthew xix.*³

Ἄν δέ που μοιχείας αἰτίαν προβάληται, καὶ τοιαύτην παράσχοι τοῦ χωρισμοῦ τὴν ἀπολογίαν, εὐθὺς τὴν σινηγορίαν μεταθήσομαι τοῦ ἀδικηθέντος, καὶ τὸν λόγον κατὰ τῆς μοιχαλίδος παρασκευάσας, ἀγαθὸς συνασπιστὴς ἀντὶ πολεμίου τῷ ἀνδρὶ παραστήσομαι· ἐπαινῶν τὸν φερόντα τὴν ἐπίβουλον, τὸν διακόψαντα τὸν δεσμὸν, ὃ πρὸς τὴν ἀσπίδα ἢ τὴν ἔχιδναν προσεδέδετο. Τοῦτο γὰρ δίδωσι τὴν συγγνώμην πρῶτος ὁ τοῦ παντὸς ποιητῆς, ὡς καὶ δικαίως ἀλγοῦντι, καὶ προσηκόντως τῆς αἰτίας ἀπελαύνοντι καὶ τῆς ἐστίας τὴν νόσον. Γάμος γὰρ τούτων χάριν τῶν δύο συνίσταται, διαθήσεως καὶ παιδοποιίας· ὃν οὐδέτερον μετὰ

¹ Mansi, tom. i. p. 373.² Migne's Ed. p. 228 (*Patr. Graec. tom. xl.*).³ Migne's Ed. p. 237.

μοιχείας σώζεται. Ἡ μὲν γὰρ διάθεσις οὐκ ἔστιν, πρὸς ἄλλον τῆς εὐνοίας ἀποκλινάσης· παιδοποιΐας δὲ τὸ καλὸν ἀνῆρηται, συγκεχυμένων τῶν τέκνων. Ἀλλὰ τὰ μὲν εἰς τοῦτο φέροντα τὸ ἀμάρτημα εἴρηται ἐν ἄλλῃ ὑποθέσει συμμέτρως. Ἀμφότερα δέ μοι τὰ μέρη σωφροσύνην ἀσκησάτω, τὸν ἀρῥαγῇ τῶν γάμων σύνδεσμον. Ὅπου γὰρ αὕτη τιμᾶται, ἐπάναγκες εἶναι καὶ εἰρήνην καὶ πόθον· οὐδημίας πανδήμον καὶ νόθου ἐπιθυμίας τὴν ψυχὴν ἐπιθηγούσης, ἐμβαλούσης δὲ τὴν νόμιμον καὶ δικαίαν στοργήν.

Οὗτος τῆς σωφροσύνης ὁ νόμος οὐ ταῖς γυναιξὶ μόνον παρὰ Θεοῦ ὤριστα, ἀλλὰ καὶ τοῖς ἀνδράσιν. Οἱ δὲ τοῖς τοῦ βίου τούτου νομοθέταις προσέχοντες ἀνεύθυνον καταλείπουσι τῆς πορνείας τοῖς ἀνδράσι τὴν ἐξουσίαν, βαρεῖς μὲν εἰσι κριταὶ καὶ διδάσκαλοι τῆς τῶν γυναικῶν σεμνότητος· οἱ δ' ἐν πολλοῖς ἀναίδην ἐπιμαίνοντες σώμασιν.

Εἰ δέ τι καὶ τοῖς νόμοις Ῥωμαίων τινὲς προσέχοντες ἀνεύθυνον τὴν πορνείαν εἶναι νομίζουσι, δεινὴν πλανῶνται πλάνην, οὐκ εἰδότες, ὥς ἄλλως Θεὸς νομοθετεῖ, καὶ ἑτέρως ἄνθρωποι δογματίζουσιν.

S. TIMOTHY OF ALEXANDRIA.

*Interrogatio 15.*¹

Ἐρώτησις. Ἐάν τινος γυνὴ πνευματιῶ, ὥστε καὶ σίδηρα φορεῖν, ὁ δὲ ἀνὴρ λέγει, ὅτι Οὐ δύναμαι ἐγκρατεῦσθαι, καὶ θέλει λαβεῖν ἄλλην· ὀφείλει λαβεῖν ἑτέραν ἢ οὐ;

Ἀπόκρισις. Μοιχεία μεσολαβεῖ τῷ πράγματι· καὶ περὶ τούτου τι ἀποκρίνεσθαι οὐκ ἔχω, ἢ ἐφευρίσκω.

S. CHRYSOSTOM.

*De Virginitate, § 28.*²

Οὐδὲ γὰρ ἐκεῖνοι πρότερον φορτικὸν εἶναι καὶ ἐπαχθῇ τὸν γάμον ἐνόμισαν, ἀλλ' ὅτε ἤκουσαν τοῦ Κυρίου εἰς ταύτην αὐτοὺς κατακλείοντος τὴν ἀνάγκην, εἰς ἣν καὶ τοὺς Κορινθίους ὁ Παῦλος τότε. Τὸ γὰρ, Ὅς ἂν ἀπολύσῃ τὴν γυναῖκα αὐτοῦ, παρεκτὸς λόγου πορνείας, ποιεῖ αὐτὴν μοιχᾶσθαι· καὶ τὸ, Ὁ ἀνὴρ τοῦ ἰδίου σώματος οὐκ ἐξουσιάζει, ῥήμασι μὲν ἑτέροις, γνώμῃ δὲ εἴρηται τῇ αὐτῇ. Εἰ δέ τις ἀκριβέστερον καταμάθοι τὸ τοῦ Παύλου, μᾶλλον ἐπιτείνει τὴν τυραννίδα, καὶ φορτικωτέραν ἐργάζεται τὴν δουλείαν. Ὁ μὲν γὰρ Κύριος οὐκ ἀφήσιν κύριον εἶναι τὸν ἄνδρα τοῦ τῆς οἰκίας ἐκβαλεῖν αὐτήν· ὁ δὲ Παῦλος καὶ τὴν τοῦ οἰκείου σώματος ἐξουσίαν παραιρεῖται, πᾶσαν αὐτοῦ τὴν ἀρχὴν τῇ

¹ Migne's Ed. *Patr. Graec.* tom xxxiii. p. 1305.

² *Ibid.* tom. i. p. 552.

γυναικὶ παραδιδούς, καὶ ἀργυρωνήτον μᾶλλον ὑποτάξας οἰκέτον. Τοῦτο μὲν γὰρ ἔξοστι πολλάκις καὶ παντελοῦς ἐλευθερίας τυχεῖν, εἴ γε δινηθείη ποτὲ εὐπορήσας ἀργυρίου καταθεῖναι τὴν τιμὴν τῷ δεσπότῃ· ὁ δὲ ἀνὴρ, κἂν τὴν ἀπάντων ἀργαλεωτέραν ἔχῃ γυναῖκα, στέργειν ἀναγκάζεται τὴν δουλείαν, καὶ λύσιν οὐδεμίαν οὐδὲ διέξοδον ταύτης δύναται τῆς δεσποτείας εὐρεῖν.

De Virginitate, § 40.¹

Τί οὖν, ἐὰν μὲν ὁ ἀνὴρ ἐπικεκῆς ᾖ, ἢ δὲ γυνὴ μοχθηρὰ, λοιδόρος, λάλος, πολυτελής, τὸ κοινὸν τοῦτο πασῶν αὐτῶν νόσημα, ἐτέρων πλειόνων γέμονσα κακῶν, πῶς οἴσται τὴν καθημερινὴν ταύτην ἀηδίαν ἐκείνος ὁ δέιλαιος, τὸν τῦφον, τὴν ἀναισχυντίαν; Τί δαί, ἂν τουναντίον αὐτῇ μὲν ᾖ κοσμία καὶ ἡσυχος, ἐκείνος δὲ θρασὺς, ὑπεροπτικὸς, ὀργίλος, πολὺν μὲν ἀπὸ τῶν χρημάτων, πολὺν δὲ ἀπὸ τῆς δυναστείας ὄγκον περιβεβλημένος, καὶ τὴν ἐλευθέραν ὡς δούλην ἔχῃ, καὶ τῶν θεραπαινίδων μηδὲν ἄμεινον πρὸς αὐτὴν διακέχται, πῶς οἴσται τὴν τοσαύτην ἀνάγκην καὶ βίαν; Τί δαί, ἂν συνεχῶς αὐτὴν ἀποστρέφεται, καὶ διαπαντὸς μένη τοῦτο ποιῶν; Καρτέρει, φησὶν, πᾶσαν ταύτην τὴν δουλείαν· ὅταν γὰρ ἀποθάνῃ, τότε ἐλευθέρᾳ ἔσῃ μόνον, ζῶντος δὲ δυνάμει θάτερον ἀνάγκη, ἢ παιδωγαγεῖν αὐτὸν μετὰ πολλῆς τῆς σπουδῆς καὶ βελτίῳ ποιεῖν, ἢ, εἰ τοῦτο ἀδύνατον, φέρειν γενναῖως τὸν ἀκήρυκτον πόλεμον καὶ τὴν αὐτοποιδὸν μάχην. Καὶ ἀνωτέρω μὲν ἔλεγε· Μὴ ἀποστερεῖτε ἀλλήλους, εἰ μὴ τι ἂν ἐκ συμφώνου· ἐνταῦθα δὲ χωρισθεῖσαν αὐτὴν καὶ ἄκουσαν ἐγκρατεῖσθαι κελεύει λοιπόν· Μενέτω γὰρ, φησὶν, ἄγαμος, ἢ τῷ ἀνδρὶ καταλλαγήτω. Ὅρῳ αὐτὴν ἐν μέσῳ δυοῖν ἀπειλημένην πολέμων; Ἡ γὰρ τὴν ἀπὸ τῆς ἐπιθυμίας βίαν χρὴ καρτερεῖν, ἢ τοῦτο μὴ βουλομένην κολακεύειν τὸν ὑβριστὴν, καὶ παρέχειν ἐαυτὴν ἐκείνῳ πρὸς ὅπερ ἂν βούληται, εἴτε πληγὰς ἐντείνει, εἴτε λοιδωρίαις πλῦναι, εἴτε οἰκετῶν ὑπεροψία παραδοῦναι, εἴτε ἕτερον τι τοιούτου· πολλὰ γὰρ ὁδοὶ τοῖς ἀνδράσιν ἐπινειρόνται, ὅταν κολάζειν βούλωνται τὰς ἑαυτῶν γυναῖκας. Εἰ δὲ ταῦτα μὴ φέροι, τὴν ἐγκράτειαν ἀσκεῖν χρὴ τὴν ἄκαρπον· τὴν ἄκαρπον δὲ λέγω, ἐπειδὴ μὴ τὴν αὐτῇ προσήκουσαν ὑπόσχεσιν ἔχει· οὐ γὰρ διὰ ἀγνοσίμης ἐπιθυμίας, ἀλλὰ διὰ τὴν πρὸς τὸν ἄνδρα ὀργὴν γίνεται. Μενέτω γὰρ, φησὶν, ἄγαμος, ἢ τῷ ἀνδρὶ καταλλαγήτω. Τί οὖν, ἂν μηδέποτε βούληται καταλλαγήναι; φησὶν. Ἐχεις δευτέραν λύσιν καὶ ἀπαλλαγὴν. Τίνα ταύτην; Ἀνάμενε τὸν τούτου θάνατον. Ὡς περ γὰρ τῇ παρθένῳ γαμεῖσθαι οὐδέποτε ἔξοστι διὰ τὸ ἔξῃ αὐτῆς αἰετὸν τὸν νυμφίον καὶ ἀθάνατον εἶναι, οὕτω τῇ γεγαμημένῃ τότε μόνον ἔξοστι, ὅταν ὁ ἀνὴρ ἀποθάνῃ. Εἰ γὰρ ἔξῃ καὶ ζῶντος ἀπὸ τούτου πρὸς ἕτερον, καὶ πάλιν ἀπ' ἐκείνου πρὸς ἄλλον μεταπύδῃ, τί γάμων ἔδει

¹ Migne's Ed. tom. i. p. 562.

λοιπὸν, ταῖς ἀλλήλων γυναιξὶν ἀδιακρίτως τῶν ἀνδρῶν κεχρημένων, καὶ πάσαις ἀπλῶς ἀναμειγμένων ἀπάντων; πῶς δὲ οὐκ ἂν καὶ πρὸς τοὺς συνοικοῦντας διεφθάρη ἡ διάθεσις, τήμερον μὲν τούτου, αὔριον δὲ ἐκείνου, καὶ πάλιν ἄλλου τῇ αὐτῶν συζώντων γυναικί; Δικαίως οὖν ὁ Κύριος αὐτὸ μοιχείαν ἐκάλεσε.

Homiliae in Matthaeum xvii. (on c. v. 31, 32).¹

“Ἐρρέθη δέ· ὃς ἂν ἀπολύσῃ τὴν γυναῖκα αὐτοῦ, δότω αὐτῇ βιβλίον ἀποστασίου. Ἐγὼ δὲ λέγω ὑμῖν, ὅτι ὃς ἂν ἀπολύσῃ τὴν γυναῖκα αὐτοῦ, παρεκτὸς λόγου πορνείας, ποιεῖ αὐτὴν μοιχευθῆναι· καὶ ὃς ἂν ἀπολελυμένην γάμῃσῃ, μοιχᾶται.” Οὐ πρότερον ἐπὶ τὰ ἔμπροσθεν πρόεισιν, ἕως τὰ πρότερα ἐκκαθάρῃ καλῶς. Ἴδου γὰρ καὶ ἕτερον δείκνυσιν ἡμῖν μοιχείας εἶδος. Τί δὲ τοῦτό ἐστι; Νόμος ἦν κείμενος παλαιός, τὸν μισοῦντα τὴν γυναῖκα τὴν ἑαυτοῦ ἐξ οἰασθῆποτε αἰτίας, μὴ κωλύεσθαι ἐκβάλλειν, καὶ ἑτέραν αὐτ’ ἐκείνης εἰσάγειν. Οὐ μὴν τοῦτο ἀπλῶς ποιεῖν ὁ νόμος ἐκέλευσεν, ἀλλὰ δόντα βιβλίον ἀποστασίου τῇ γυναικί, ὥστε μὴ εἶναι κυρίαν πάλιν ἐπ’ αὐτὸν ἐπανελθεῖν, ἵνα κἂν τὸ σχῆμα μένῃ τοῦ γάμου. Εἰ γὰρ μὴ τοῦτο ἐπέταξεν, ἀλλ’ ἐξῆν ἐκβάλλειν τε αὐτὴν καὶ ἑτέραν λαμβάνειν, εἴτα τὴν προτέραν ἐπανάγειν, πολλὴ ἢ σύγχυσις ἔμελλεν εἶναι, συνεχῶς τὰς ἀλλήλων λαμβανόντων ἀπάντων, καὶ μοιχεία τὸ πρᾶγμα λοιπὸν ἦν σαφές. Διόπερ οὐ μικρὰν ἐπενόησε παραμυθίαν, τὸ βιβλίον τοῦ ἀποστασίου. Ἐγένετο δὲ ταῦτα δι’ ἑτέραν πολλῶ μείζονα κακίαν. Εἰ γὰρ ἠνάγκασε καὶ μισομένην κατέχειν ἔνδον, ἔσφαξεν ἂν ὁ μισῶν· τοιοῦτον γὰρ τῶν Ἰουδαίων τὸ ἔθνος. Οἱ γὰρ παῖδων μὴ φειδόμενοι, καὶ προφήτας ἀναιροῦντες, καὶ ὡς ὕδωρ οἶμα ἐκχέοντες, πολλῶ μᾶλλον γυναικῶν οὐκ ἂν ἐφείσαντο. Διὰ τοῦτο τὸ ἔλαττον συνεχώρησε, τὸ μείζον ἐκκόπτων. Ἐπεὶ ὅτι οὐ προηγούμενος οὗτος ὁ νόμος ἦν, ἄκουσον αὐτοῦ λέγοντος· “Μωϋσῆς πρὸς τὴν σκληροκαρδίαν ὑμῶν ταῦτα ἔγραψεν,” ἵνα μὴ ἔνδον σφάττητε, ἀλλ’ ἐξω ἐκβάλλητε. Ἐπειδὴ δὲ αὐτὸς τὴν ὀργὴν πᾶσαν ἀνεῖλεν, οὐχὶ τὸν φόνον μόνον, ἀλλὰ καὶ τὸ ἀπλῶς θυμοῦσθαι κωλύσας, μετ’ εὐκολίας καὶ τοῦτον εἰσάγει τὸν νόμον. Διὰ τοῦτο καὶ τῶν προτέρων αἰεὶ ῥημάτων ἀναμιμνήσκει, ἵνα δείξῃ ὅτι οὐκ ἐναντία ἐκείνοις, ἀλλὰ συμβαίνοντα λέγει· ἐπιτείνων αὐτὰ, οὐκ ἀνατρέπων· καὶ διορθούμενος, οὐ λύων. Ὅρα δὲ αὐτὸν πανταχοῦ τῷ ἀνδρὶ διαλεγόμενον. “Ὁ γὰρ ἀπολύων, φησὶ, τὴν γυναῖκα αὐτοῦ, ποιεῖ αὐτὴν μοιχευθῆναι· καὶ ὁ γαμῶν ἀπολελυμένην, μοιχᾶται.” Ὁ μὲν γὰρ, κἂν ἑτέραν μὴ λάβῃ, τούτῳ αὐτῷ κατέστησεν ἑαυτὸν ἐγκλήματος ὑπεύθυνον, μοιχαλίδα ποιήσας ἐκείνην· ὁ δὲ, τῷ τὴν ἀλλοτρίαν λαβεῖν, μοιχὸς γέγονε πάλιν. Μὴ γάρ μοι

¹ Field's Ed. tom. i. p. 245; Migne's Ed. tom. vii. p. 259.

τοῦτο εἶπης, ὅτι ἐξέβαλεν ἐκεῖνος· καὶ γὰρ ἐκβληθεῖσα μένει τοῦ ἐκβάλλοντος οἶσα γυνή. Εἶτα, ἵνα μὴ τὸ ὅλον ἐπὶ τὸν ἐκβάλλοντα ῥίψας, αὐθαδεστέραν ἐργάσῃται τὴν γυναῖκα, καὶ τὰς τοῦ δεχομένου μετὰ ταῦτα ἀπέκλεισεν αὐτῇ θύρας, τῷ μὲν εἰπεῖν, “ὅς ἂν ἀπολελυμένην γαμήσῃ, μοιχᾷται,” τὴν γυναῖκα καὶ ἄκουσαν σωφρονίζων, καὶ τὴν πρὸς πάντας ἀποτειχίζων εἰσοδὸν αὐτῇ, καὶ οὐκ ἐπιτρέπων ἀφορμὰς παρέχειν μικροψυχίας. Ἡ γὰρ μαθοῦσα ὅτι πᾶσα ἀνάγκη, ἢ τὸν ἐξ ἀρχῆς κληρωθέντα ἔχειν, ἢ τῆς οἰκίας ἐκπεσοῦσαν ἐκείνης, μηδεμίαν ἑτέραν ἔχειν καταφυγὴν, καὶ ἄκουσα ἠναγκάζετο στέργειν τὸν σύνοικον. Εἰ δὲ μηδὲν αὐτῇ περὶ τούτων διαλέγεται, μὴ θαυμάσης· ἀσθενέστερον γὰρ ἢ γυνή. Διὰ τοῦτο αὐτὴν ἀφείς, ἐν τῇ κατὰ τῶν ἀνδρῶν ἀπειλῇ τὴν αὐτῆς διορθοῦται ῥαθυμίαν. “Ὡσπερ ἂν εἴ τις παῖδα ἄσωτον ἔχων, ἐκείνον ἀφείς, τοῖς ποιοῦσιν αὐτὸν τοιοῦτον ἐπιπλήττοι, καὶ ἐκείνοις ἀπαγορεύει μὴ συγγίνεσθαι, μηδὲ πλησιάζειν αὐτῷ. Εἰ δὲ φορτικὸν τοῦτο, ἀναμνήσθητί μοι τῶν ἔμπροσθεν εἰρημένων, ἐφ’ οἷς ἐμακάρισε τοὺς ἀκούοντας, καὶ ὅψι πολλὸν δυνατὸν καὶ εὐκολον ὄν. ‘Ὁ γὰρ πρῶος, καὶ εἰρηνοποιὸς, καὶ πτωχὸς τῷ πνεύματι, καὶ ἐλεήμων, πῶς ἐκβαλεῖ τὴν γυναῖκα; ὁ ἑτέρους καταλλάττων, πῶς αὐτὸς διαστασιάζει πρὸς τὴν ἑαυτοῦ; Οὐ ταύτῃ δὲ μόνον, ἀλλὰ καὶ ἑτέρῳ τρόπῳ κοῦφον ἐποίησε τὸν νόμον. Καὶ γὰρ καὶ τούτῳ καταλιμπάνει τρόπον ἕνα ἀφέσεως, εἰπὼν, “παρεκτὸς λόγου πορνείας.” ἐπεὶ πάλιν εἰς τὸ αὐτὸ περιύστατο. Εἰ γὰρ ἐκέλευσε καὶ πολλοῖς συγγινομένην κατέχειν ἔνδον, πάλιν εἰς μοιχείαν τὸ πρῶγμα κατέστρεφεν. ‘Ὁρῶς πῶς συμβαίνοντα ταῦτα τοῖς ἔμπροσθεν; ‘Ὁ γὰρ μὴ βλέπων ἑτέραν γυναῖκα ἀκολάστοις ὀφθαλμοῖς, οὐ πορνεύσει· μὴ πορνεύων δὲ, οὐ παρέξει τῷ ἀνδρὶ ἀφορμὴν ἐκβαλεῖν τὴν ἑαυτοῦ γυναῖκα. Διὰ δὲ τοῦτο λοιπὸν μετὰ ἀδείας ἐπισφίγγει, καὶ τὸν φόβον ἐπιτειχίζει, μέγαν ἐπισείων τῷ ἀνδρὶ τὸν κίνδυνον, εἴγε ἐκβάλοι· τῆς γὰρ μοιχείας τῆς ἐκείνης ὑπεύθυνον ἑαυτὸν ποιεῖ. Ἴνα γὰρ μὴ ἀκούσας, ἔξελε τὸν ὀφθαλμὸν, νομίσης καὶ περὶ γυναικὸς ταῦτα λέγεσθαι, εὐκαίρως ἐπήγαγε τὴν ἐπιδιόρθωσιν ταύτην, ἐνὶ τρόπῳ μόνῳ συγχωρῶν ἐκβάλλειν αὐτὴν, ἑτέρῳ δὲ οὐδενί.

Homiliae in S. Matthaeum 62 (on ch. xix.).¹

Εἰ δὲ ἐβούλετο ταύτην μὲν ἀφιέναι, ἑτέραν δὲ ἐπεισάγειν, ἕνα ἄνδρα ποιήσας, πολλὰς ἂν ἔπλασε γυναῖκας.

Νῦν δὲ καὶ τῷ τρόπῳ τῆς δημιουργίας καὶ τῷ τρόπῳ τῆς νομοθεσίας ἔδειξεν, ὅτι ἕνα δεῖ μὴ συννοικεῖν διαπαντὸς, καὶ μηδέποτε διαρρήγνυσθαι. Καὶ ὅρα πῶς φησιν· ‘Ὁ ποιήσας ἐξ ἀρχῆς, ἄρσεν καὶ θῆλυ ἐποίησε· τουτέστιν, Ἐκ μιᾶς ῥίζης ἐγένοντο· καὶ εἰς ἓν σῶμα

¹ Field's Ed. tom. ii. p. 216; Migne's Ed. tom. vii. p. 598.

συνῆλθον· Ἔσονται γὰρ οἱ δύο εἰς σάρκα μίαν. Εἴτα φοβερὸν ποιῶν τὸ ταύτης κατηγορεῖν τῆς νομοθεσίας, καὶ πηγνὺς τὸν νόμον, οὐκ εἶπε, Μὴ διασπάτε τοῖνον, μηδὲ χωρίζετε· ἀλλ' ὅτι Ὁ ὁ Θεὸς συνέξευξεν, ἄνθρωπος μὴ χωρίζετω. Εἰ δὲ Μωϋσέα προβάλλῃ, ἐγὼ σοι λέγω τὸν Μωϋσέως δεσπότην, καὶ μετὰ τούτου καὶ τῷ χρόνῳ ἰσχυρίζομαι. Ὁ γὰρ Θεὸς ἐξ ἀρχῆς ἄρσεν καὶ θῆλυ ἐποίησεν αὐτούς· καὶ πρεσβύτερος οὗτος ὁ νόμος, εἰ καὶ δοκεῖ παρ' ἐμοῦ νῦν εἰσάγεσθαι, καὶ μετὰ πολλῆς κείμενος τῆς σπουδῆς. Οὐδὲ γὰρ ἀπλῶς προσήγαγε τὴν γυναῖκα τῷ ἀνδρὶ, ἀλλὰ καὶ μητέρα ἀφείναι ἐκέλευσε καὶ πατέρα. Καὶ οὐδὲ ἐλθεῖν πρὸς τὴν γυναῖκα ἀπλῶς ἐνομοθέτησεν, ἀλλὰ καὶ κολληθῆναι, τῷ τρόπῳ τῆς λέξεως τὸ ἀδιάσπαστον ἐμφαίνων. Καὶ οὐδὲ τούτῳ ἠρκέσθη, ἀλλὰ καὶ ἑτέραν μείζονα συνάφειαν ἐπεξήτησεν· Ἔσονται γὰρ, φησὶν, οἱ δύο εἰς σάρκα μίαν.

Εἴτα ἐπειδὴ τὸν παλαιὸν ἀνέγνω νόμον, τὸν καὶ διὰ πραγμάτων καὶ διὰ ῥημάτων εἰσενεχθέντα, καὶ ἀξιόπιστον ἀπὸ τοῦ δεδοκότες ἀπέφηνε, μετ' ἐξουσίας λοιπὸν καὶ αὐτὸς ἐρμηνεύει καὶ νομοθετεῖ λέγων· Ὡστε οὐκέτι εἰσὶ δύο, ἀλλὰ σὰρξ μία. Ὡσπερ οὖν σάρκα τεμεῖν ἑναγές, οὕτω καὶ γυναῖκα διαστήσαι παράνομον. Καὶ οὐκ ἔστη μέχρι τούτου, ἀλλὰ καὶ τὸν Θεὸν ἐπήγαγε, λέγων· Ὁ οὖν ὁ Θεὸς συνέξευξεν, ἄνθρωπος μὴ χωρίζετω· δεικνὺς ὅτι καὶ παρὰ φύσιν καὶ παρὰ νόμον τὸ γινόμενον· παρὰ φύσιν μὲν, ὅτι μία διατέμενται σὰρξ· παρὰ νόμον δὲ, ὅτι τοῦ Θεοῦ συνάψαντος καὶ κελεύσαντος μὴ διαχωρίζεσθαι, αὐτοὶ συνεπιτίθεσθε τοῦτο δρᾶν.

Λέγω δὲ ὑμῖν, ὅτι ὃς ἂν ἀπολύσῃ τὴν γυναῖκα αὐτοῦ παρεκτὸς λόγου πορνείας, καὶ γαμήσῃ ἄλλην, μοιχᾶται. Ἐπειδὴ γὰρ αὐτοὺς ἐπεστόμισε, μετὰ αὐθεντίας νομοθετεῖ λοιπὸν, ὥσπερ ἐπὶ τῶν βρωμάτων, ὥσπερ ἐπὶ τοῦ σαββάτου. Καὶ γὰρ ἐπὶ τῶν βρωμάτων τρεψάμενος αὐτούς, τότε διαλέχθη τοῖς ὄχλοις, ὅτι οὐ τὸ εἰσερχόμενον κοινοὶ τὸν ἄνθρωπον· καὶ ἐπὶ τοῦ σαββάτου ἐπιστομίσας αὐτοὺς φησιν· Ὡστε ἔξεστιν ἐν σαββάτῳ καλῶς ποιεῖν· καὶ ἐνταῦθα τὸ αὐτὸ τοῦτο. Ἀλλ' ὅπερ ἐκεῖ συνέβη τοῦτο καὶ ἐνταῦθα. Ὡσπερ γὰρ ἐκεῖ τῶν Ἰουδαίων ἐπιστομισθέντων οἱ μαθηταὶ ἐθορυβήθησαν, καὶ προσελθόντες αὐτῷ μετὰ Πέτρου ἔλεγον· Φράσον ἡμῖν τὴν παραβολὴν ταύτην· οὕτω καὶ νῦνθορυβηθέντες ἔλεγον· Εἰ οὕτως ἐστὶν ἡ αἰτία τοῦ ἀνθρώπου, συμφέρεῖ μὴ γαμῆσαι. Καὶ γὰρ νῦν ἐνόησαν μᾶλλον ἢ πρότερον τὸ λεχθέν. Διὰ τοῦτο τότε μὲν ἐσίγησαν, νῦν δὲ, ἐπειδὴ ἀντίρρῃσι καὶ ἀπόκρισις γέγονε, καὶ ἐρώτησις καὶ πεῦσις, καὶ σαφέστερος ὁ νόμος ἐφάνη, ἐρωτῶσιν αὐτόν. Καὶ φανερώς μὲν ἀντειπεῖν οὐ τολμῶσι· τὸ δὲ ἐξ αὐτοῦ βαρὺ δοκοῦν εἶναι καὶ φορτικὸν εἰς μέσον προάγουσι λέγοντες· Εἰ

οὕτως ἐστὶν ἡ αἰτία τοῦ ἀνθρώπου μετὰ τῆς γυναικὸς, οὐ συμφέρει γαμῆσθαι. Καὶ γὰρ σφόδρα ἐπαχθὲς ἐδόκει εἶναι τὸ γυναικὰ πάσης κακίας γέμονσαν ἔχειν, καὶ ἀνέχεσθαι ἀνημέρου θηρίου διαπαντὸς ἔνδον συγκεκλεισμένου.

Καὶ ἵνα μάθῃς, ὅτι σφόδρα τοῦτο αὐτοὺς ἐθουρίζει, ὁ Μάρκος αὐτὸ δηλῶν ἔλεγεν, ὅτι κατ' ἰδίαν εἶπον αὐτῷ. Τί δέ ἐστιν, Εἰ οὕτως ἐστὶν ἡ αἰτία τοῦ ἀνθρώπου μετὰ τῆς γυναικὸς; Τουτέστιν, εἰ διὰ τοῦτο σιγήσῃ, ἵνα ἐν ᾧσιν· ἢ ἐκείνο, Εἰ αἰτίαν λήψεται ἐπὶ τούτοις ὁ ἀνὴρ, καὶ παιταχοῦ παραιομεῖ ἐκβάλλον, κουφότερον πρὸς ἐπιθυμίαν μάχεσθαι φύσεως καὶ πρὸς ἑαυτὸν ἢ πρὸς γυναικὰ πονηράν. Τί οὖν ὁ Χριστὸς; οὐκ εἶπεν ὅτι Ναὶ, κουφότερον, καὶ ποιεῖ τοῦτο· ἵνα μὴ νομίσωσιν ὅτι νόμος τὸ πρᾶγμά ἐστιν· ἀλλ' ἐπήγαγεν· Οὐ πάντες χωροῦσιν, ἀλλ' οἷς δέδοται· ἐπαίρων τὸ πρᾶγμά, καὶ δεικνὺς μέγα ὄν, καὶ ταύτῃ ἐφελκόμενος καὶ προτρέπων. Ἀλλ' ὅρα ἐνταῦθα ἐναντιολογίαν. Αὐτὸς μὲν γὰρ μέγα φησὶ τοῦτο· ἐκείνοι δὲ κουφότερον. Καὶ γὰρ ἀμφότερα ἔδει γενέσθαι, καὶ παρ' αὐτοῦ μέγα ὁμολογηθῆναι, ἵνα προθυμότερους ἐργάσῃται, καὶ ἐκ τῶν εἰρημένων παρ' αὐτοῖς κουφότερον δειχθῆναι, ἵνα καὶ ταύτῃ μᾶλλον τὴν παρθενίαν ἔλωνται καὶ τὴν ἐγκράτειαν. Ἐπειδὴ γὰρ τὸ περὶ παρθενίας εἰπεῖν ἐπαχθὲς εἶναι ἐδόκει, ἐκ τῆς ἀνάγκης τοῦ νόμου τούτου εἰς τὴν ἐπιθυμίαν αὐτοὺς ἐκείνην ἐνέβαλεν.

Homily on the Parable of the Unmerciful Servant.¹

Πάλιν περὶ γάμον καὶ γυναικὸς διαλεγουμένου τοῦ Χριστοῦ καὶ λέγοντος, ὅτι Ὁ ἀπολύων γυναῖκα παρεκτὸς λόγου πορνείας, ποιεῖ αὐτὴν μοιχευθῆναι, καὶ πᾶσαν κακίαν γυναικὸς παραιοῦντος φέρειν πλὴν πορνείας μόνης, ὁ Πέτρος, τῶν ἄλλων σιγῶντων, προσελθὼν ἔλεγε τῷ Χριστῷ, Εἰ οὕτως ἐστὶν ἡ αἰτία τοῦ ἀνθρώπου μετὰ τῆς γυναικὸς, οὐ συμφέρει γαμῆσθαι. Ὅρα καὶ ἐνταῦθα πῶς καὶ τὴν πρέπουσαν διδασκάλῳ τιμὴν ἐφέλαξε, καὶ τῆς τῶν λοιπῶν ἐφρόντιτε σωτηρίας, οὐδὲ ἐνταῦθα ὑπὲρ τῶν καθ' ἑαυτὸν μεριμνῶν.

*Hom. in illud "propter fornicationes autem unusquisque suam uxorem habeat."*²

Οὐ γὰρ ἐστὶν ἥσαν οὐκ ἔχοντα γυναῖκα πορνεύειν, καὶ μετὰ γάμον πάλιν τὸ αὐτὸ τοῦτο ποιεῖν. Οὐδὲ γὰρ πορνεία τὸ τοιοῦτο λοιπὸν ἐστίν, ἀλλὰ μοιχεία. Εἰ γὰρ καὶ παράδοξον ἐστὶ τὸ εἰρημένον, ἀλλ' ἀληθές.

Οὐκ ἀγνοοῦμεν γὰρ ὅτι πολλοὶ μοιχείαν νομίζουσιν, ὅταν τις ἵπαν-

¹ Migne's Ed. tom. iii. p. 21.

² *Ibid.* tom. iii. p. 213.

δρον φθείρη γυναῖκα μόνον· ἐγὼ δὲ καὶ δημοσίᾳ πόρνη, καὶ θεραπαινίδι, καὶ ἄλλῃ τινὶ γυναικὶ ἄνδρα οὐκ ἐχούσῃ πρόσχη κακῶς καὶ ἀκολάστως, ἔχων γυναῖκα, μοιχείαν τὸ τοιοῦτον εἶναί φημι. Οὐ γὰρ δὴ μόνον ἀπὸ τῶν ὑβριζομένων, ἀλλὰ καὶ ἀπὸ τῶν ὑβριζόντων τὸ τῆς μοιχείας συνίσταται ἔγκλημα. Μὴ γάρ μοι τοὺς ἔξωθεν νόμους εἴπῃς νῦν, οἳ τὰς μὲν γυναῖκας μοιχευομένας εἰς δικαστήριον ἔλκουσι καὶ εὐθύνας ἀπαιτοῦσιν, ἄνδρας καὶ γυναῖκας ἔχοντας καὶ θεραπαινίσιν προφθειρομένους οὐκ ἀπαιτοῦσιν εὐθύνας· ἀλλ' ἐγὼ σοι τὸν τοῦ Θεοῦ νόμον ἀναγνώσομαι, ὁμοίως καὶ ἐπὶ τῆς γυναικὸς καὶ ἐπὶ τοῦ ἀνδρὸς ἀγανακτοῦντα, καὶ μοιχείαν εἶναι τὸ πρᾶγμα λέγοντα.

In 1 Cor. vii. 13, sqq. Hom. xix.¹

Εἰ τοίνυν ὁ κολλώμενος τῇ πόρνῃ ἐν σῶμά ἐστι, καὶ αὐτὸς γίνεται μιὰρὸς πορνεούσῃ μιγνύμενος, διὰ τοῦτο ἀφίπταται ἡ καθαρότης ἅπασα.

De libello repudii.² (Homily on 1 Cor. vii. 39, 40.)

Γυνή, φησὶ, δέδεται νόμῳ. Οὐκοῦν οὐ δεῖ ἀποσχίσεσθαι ζῶντος τοῦ ἀνδρὸς, οὐδὲ ἕτερον ἐπεισάγειν νυμφίον, οὐδὲ δευτέροις ὁμιλεῖν γάμοις. Καὶ ὅρα πῶς μετὰ ἀκριβείας καὶ αὐτῇ τῶν λέξεων τῇ φύσει κέχρηται. Οὐ γὰρ εἶπε, Συνοικεῖτω τῷ ἀνδρὶ, ἐφ' ὅσον χρόνον ζῇ· ἀλλὰ τί; Γυνή δέδεται νόμῳ, ἐφ' ὅσον χρόνον ζῇ· ἀλλὰ τί; Γυνή δέδεται νόμῳ, ἐφ' ὅσον χρόνον ζῇ ὁ ἀνὴρ αὐτῆς· ὥστε καὶ βιβλίον ἀποστασίου δῶ, καὶ τὴν οἰκίαν ἀφῇ, καὶ πρὸς ἄλλον ἀπελθῇ, τῷ νόμῳ δέδεται, καὶ μοιχαλὶς ἐστὶν ἡ τοιαύτη.

Ἐὰν τοίνυν ὁ ἀνὴρ ἐκβαλεῖν βούληται τὴν γυναῖκα, ἢ ἡ γυνὴ τὸν ἄνδρα ἀφείναι, ταύτης ἀναμνησκέσθω τῆς ρήσεως, καὶ τὸν Παῦλον νομιζέτω παρῆναι καὶ καταδιώκειν αὐτὴν βοῶντα καὶ λέγοντα, Γυνή δέδεται νόμῳ. Καθάπερ γὰρ οἱ δραπετεύοντες οἰκέται, καὶ τὴν οἰκίαν ἀφῶσι τὴν δεσποτικὴν, τὴν ἄλυσιν ἔχουσιν ἐπισυρομένην· οὕτω καὶ γυναῖκες, καὶ τοὺς ἄνδρας ἀφῶσι, τὸν νόμον ἔχουσι καταδικάζοντα ἀντὶ ἀλύσεως, κατηγοροῦντα μοιχείαν, κατηγοροῦντα τῶν λαμβανόντων, καὶ λέγοντα· Περίεστιν ὁ ἀνὴρ ἔτι, καὶ μοιχεία τὸ γινόμενόν ἐστι. Γυνή γὰρ δέδεται νόμῳ, ἐφ' ὅσον χρόνον ζῇ ὁ ἀνὴρ αὐτῆς, καὶ πᾶς ὁ ἀπολελυμένην γαμῶν μοιχᾶται. Καὶ πότε, φησὶν, ἐξέσται αὐτῇ δευτέροις ὁμιλῆσαι γάμοις; Πότε; Ὅταν τῆς ἀλύσεως ἀπαλλαγῇ, ὅταν ὁ ἀνὴρ τελευτήσῃ. Τοῦτο γοῦν δηλῶν, οὐ προσέθηκεν, ὅτι Ἐὰν τελευτήσῃ ὁ ἀνὴρ αὐτῆς, ἐλευθέρα ἐστὶν ᾧ θέλει γαμηθῆναι, ἀλλ' Ἐὰν κοιμηθῇ, μονονουχὶ παραμυθούμενος τὴν ἐν χερεῖᾳ, καὶ πείθων μένειν ἐπὶ τῷ προτέρῳ, καὶ μὴ δεύτερον εἰσαγαγεῖν νυμφίον. Οὐκ ἐτελεύτησέ σου ὁ

¹ Migne's Ed. tom. x. p. 154.

² *Ibid.* tom. iii. p. 218.

ἀνὴρ, ἀλλὰ καθεύδει. Τίς καθεύδοντα οὐκ ἀναμένει; Διὰ τοῦτό φησιν, Ἐὰν δὲ κοιμηθῇ, ἐλευθέρα ἐστὶν ᾧ θέλει γαμηθῆναι· οὐκ εἶπε, Γαμείσθω, ἵνα μὴ δόξῃ βιάζεσθαι καὶ ἀναγκάζειν· οὔτε ἐκώλυσε βουλομένην ὁμιλεῖν δευτέρῳ γάμῳ, οὔτε μὴ θέλουσαν προετρέψατο, ἀλλὰ τὸν νόμον ἀνέγνω εἰπὼν, Ἐλευθέρα ἐστὶν ᾧ θέλει γαμηθῆναι. Ἐλευθέραν δὲ αὐτὴν μετὰ τὴν τοῦ ἀνδρὸς τελευτήν γεγενῆσθαι λέγων, ἔδειξεν ὅτι πρὸ τοῦτου δοῦλη ἦν, ζῶντος ἐκείνου· δοῦλη δὲ οὔσα καὶ ὑποκειμένη τῷ νόμῳ, καὶ μυριάκις βιβλίον ἀποστασίου λάβῃ, τῷ τῆς μοιχείας ἀλύσκεται νόμῳ. Οἰκέταις μὲν γὰρ ἔξεστι δεσπότης ἀμείβειν ζῶντας· γυναικὶ δὲ οὐκ ἔξεστιν ἄνδρας ἀμείβειν, ζῶντος τοῦ ἀνδρός· ἐπεὶ τὸ πρᾶγμα μοιχεία ἐστὶ. Μὴ γάρ μοι τοὺς παρὰ τοῖς ἔξωθεν κειμένους νόμους ἀναγνῶς, τοὺς κελεύοντας διδόναι βιβλίον ἀποστασίου, καὶ ἀφίστασθαι. Οὐ γὰρ δὴ κατὰ τούτους σοι μέλλει κρίνειν τοὺς νόμους ὁ Θεὸς ἐν τῇ ἡμέρᾳ ἐκείνῃ, ἀλλὰ καθ' οὓς αὐτὸς ἔθηκε.

Ἐπειδὴ γὰρ πρὸς φόνους ἦσαν ἔτοιμοι, καὶ συγγενικῶν αἱμάτων τὰς οἰκίας ἐπλήρουν, καὶ οὔτε τῶν οἰκείων, οὔτε τῶν ἀλλοτρίων ἐφείδοντο· ἵνα μὴ κατασφάττωσι τὰς γυναῖκας ἔνδον, ὥς ἂν ἀηδῶς ἔχωσιν, ἐκέλευεν ἐκβαλεῖν, μείζον ἀναιρῶν κακὸν τὴν περὶ τὰς σφαγὰς εὐκολίαν. "Οτι γὰρ μαιφόνοι τινὲς ἦσαν, ἄκουε αὐτῶν τῶν προφητῶν λεγόντων· Οἰκοδομοῦντες Σιών ἐν αἵματι, καὶ Ἱερουσαλήμ ἐν ἀδικίαις· καὶ πάλιν, Αἵματα ἐφ' αἵμασι μίσγουσιν· καὶ πάλιν, Αἱ χεῖρες ὑμῶν αἵματος πλήρεις. "Οτι δὲ οὐ κατὰ τῶν ἀλλοτρίων μόνον, ἀλλὰ καὶ κατὰ τῶν οἰκείων ἐραίνοντο, καὶ τοῦτο δηλῶν ὁ Προφήτης ἔλεγε· Καὶ ἔθυσαν τοὺς υἱοὺς αὐτῶν καὶ τὰς θυγατέρας αὐτῶν τοῖς δαιμονίοις. Οἱ δὲ παῖδες αὐτῶν μὴ φεισάμενοι, οὐκ ἂν ἐφείσαντο γυναικῶν. "Ἰν' οἷν μὴ τοῦτο γένηται, τοῦτο ἐπέτρεψε.

Εἰ καλὸν τοῦτο ἦν, φησὶν, οὐκ ἂν ἓνα ἄνδρα ἐποίησε καὶ μίαν γυναῖκα, ἀλλὰ ἓνα ποιήσας τὸν Ἀδὰμ, δύο ἂν ἐποίησε τὰς γυναῖκας, εἴ γε ἐβούλετο τὴν μὲν ἐκβαλεῖν τὴν δὲ εἰσαγαγεῖν· νῦν δὲ διὰ τοῦ τρόπου τῆς δημιουργίας τὸν νόμον εἰσήγαγεν, ὃν ἐγὼ γράφω νῦν. Ποῖον δὴ τοῦτον; Τὸ τὴν κληρωθεῖσαν ἐξ ἀρχῆς γυναῖκα, ταύτην ἔχειν διαπαντός· οὗτος ἐκείνου παλαιότερος ὁ νόμος, καὶ τοσοῦτον, ὅσον ὁ Ἀδὰμ τοῦ Μωϋσέως. "Ωστε οὐ καινοτομῶ νῦν ἐγὼ, οὐδὲ ξένα ἐπεισφέρω δόγματα, ἀλλὰ τοῦ Μωϋσέως πρεσβύτερα καὶ ἀρχαιότερα.

Ἐἴτα ἐνδεικνύμενος, ὅτι οὐκ ἐπαινεῖ τὸ γεγεννημένον οὐδὲ γάμον εἶναι νομίζει, ἀλλὰ διὰ τὴν ἀσθένειαν αὐτῶν συγκαταβαίνει, εἰπὼν, Οὐδὲν δύνησεται ὁ ἀνὴρ ὁ πρότερος λαβεῖν αὐτὴν ἐαυτῷ γυναῖκα, ἐπήγαγε, Μετὰ

τὸ μιανθῆναι αὐτήν, ἐμφαίνων διὰ τοῦ τρόπου τῆς λέξεως, ὅτι ὁ δεύτερος γάμος, ζῶντος τοῦ πρότερου ἀνδρὸς γενόμενος, μίasma μᾶλλον ἐστίν, ἢ γάμος. Διὰ τοῦτο οὐκ εἶπε, Μετὰ τὸ γαμηθῆναι αὐτήν.

Μᾶλλον δὲ οὐδὲ ἐκείνου, οὔτε αὐτοῦ δικαίως ἂν τις τὴν τοιαύτην προσείποι· ἡ γὰρ μοιχαλὶς οὐδενός ἐστι γυνή. Καὶ γὰρ τὰς πρὸς ἐκείνον συνθήκας ἐπάτησε, καὶ πρὸς σὲ μετὰ τῶν προσηκόντων νόμων οὐκ ἦλθε.

Τί γὰρ ἐροῦμεν τότε τῷ μέλλοντι κρίνειν ἡμᾶς, ὅταν τὸν νόμον παρενεγκὼν εἰς μέσον καὶ ἀναγνοὺς εἴποι· Ἐκέλευσα ἀπολελυμένην γυναῖκα μὴ λαμβάνειν, εἰπὼν ὅτι μοιχεία τὸ πρᾶγμα ἐστίν. Πῶς οὖν ἐτόλμησας ἐπὶ κεκωλυμένον γάμον ἐλθεῖν; Τί ἐροῦμεν, καὶ τί ἀποκρινόμεθα; Οὐ γὰρ δεῖ τοὺς παρὰ τῶν ἔξωθεν κειμένους νόμους ἐκεῖ προβαλέσθαι, ἀλλ' ἀνάγκη σιγῶντας καὶ δεδεμένους εἰς τὸ τῆς γεέννης ἀπάγεσθαι πῦρ μετὰ τῶν μοιχῶν καὶ τῶν τοὺς ἁλλοτρίους ἀδικησάντων γάμους· ὃ τε γὰρ ἀπολύσας χωρὶς αἰτίας, τῆς ἐπὶ πορνείᾳ, ὃ τε ἐκβεβλημένην γαμῶν, τοῦ ἀνδρὸς ζῶντος, ὁμοίως μετὰ τῆς ἐκβληθείσης κολάζονται. Διὸ παρακαλῶ, καὶ δέομαι καὶ ἀντιβολῶ, μῆτε ἄνδρας ἐκβάλλειν γυναῖκας, μῆτε γυναῖκας ἄνδρας ἀφίεναι, ἀλλ' ἀκούειν τοῦ Παύλου λέγοντος· Γυνὴ δέδεταί νόμῳ, ἐφ' ὅσον χρόνον ζῇ ὁ ἀνὴρ αὐτῆς· ἐὰν δὲ κοιμηθῇ ὁ ἀνὴρ, ἐλευθέρα ἐστὶν ᾧ θέλει γαμηθῆναι, μόνον ἐν Κυρίῳ.

Ποίαν γὰρ ἔχοιεν συγγνώμην οἱ τοῦ Παύλου καὶ δεύτερον ἐπιτρέποντος γάμον μετὰ τὴν τελευτὴν τοῦ συνοικούντος, καὶ τοσαύτην παρέχοντος ἄδειαν, πρὸ τῆς τελευτῆς τολμῶντες τοῦτο ποιεῖν; τίνας ἂν τύχοιεν ἀπολογίας, ἢ οὗτοι οἱ ζώντων τῶν ἀνδρῶν τὰς γυναῖκας λαμβάνοντες, ἢ ἐκείνοι οἱ πρὸς τὰς πανδήμους ἀπερχόμενοι πόρνας;

THEODORET.

Graecarum Affectionum Curatio. Disp. ix.¹

Καὶ ὁ μὲν ἀδεῶς καὶ ταῖς ἁλλοτρίαις κοινωνεῖν ἐνομοθέτησε γυναῖξιν· ὁ δὲ τῆς φύσεως ποιητῆς ἐπειδὴ καὶ δημιουργῶν τῶν ἀνθρώπων τὴν φύσιν ἓνα ἐξ ἀρχῆς ἄνδρα καὶ μίαν γυναῖκα διέπλασε, καὶ τὸ διαλύειν ἀπαγορεύει τὸν γάμον, μίαν δὲ μόνην ἀφορμὴν διαλύσεως ἔδωκε, τὴν ἀληθῶς διασπῶσαν τὴν ζεύγλην. Πᾶς γὰρ, φησὶν, ὁ ἀπολύων τὴν γυναῖκα αὐτοῦ, παρεκτὸς λόγου πορνείας, ποιεῖ αὐτὴν μοιχευθῆναι· καὶ ὁ ἀπολελυμένην γαμῶν μοιχᾶται. Διὰ δὲ τούτων πάντα φέρειν κελεύει

¹ Migne's Ed. tom. iv. p. 1053.

τὰ τῆς γυναικὸς ἐλαττώματα, κἂν λάλος ᾖ, κἂν μέθυσος, κἂν εἰς λοιδορίαν προχειροτάτη· εἰ δέ γε τοῦ γάμου παραλύσει τοὺς νόμους καὶ πρὸς ἕτερον ἴδοι, τηνικαῦτα λύνειν κελεύει τὴν ζεύγλιν. Τοιαῦτα δὲ πάλιν καὶ διὰ τοῦ σκυτοτόμου νενομοθέτηκε· καὶ Κορινθίοις ἐπιστέλλων ἐκείνος πᾶσιν ἀνθρώποις νόμους προσήνεγκε.

*Commentary on Malachi ii. 13 sqq.*¹

“Εἴπατε γὰρ, Τί ἄλλο ζητεῖ ὁ Θεὸς ἢ σπέρμα; Ἀλλ’ ἐγὼ παρεγγνώ ἡμῖν, τοιῦτων ἀποστάντας τῶν λόγων, τοὺς θεῖους νόμους φυλάξαι, καὶ τὴν ἐξ ἀρχῆς συζευχθεῖσαν γυναῖκα τοῦ ζυγοῦ μὴ χωρίσαι.”

Ἐπειδὴ δὲ ᾗδει τῶν Ἰουδαίων τὸ μανικὸν ὁ τῶν ὅλων Θεὸς, ὅτι τῆς μισομένης ἀπαλλαγῆναι βουλόμενοι μὲν, οὐ δυνάμενοι δὲ διὰ τὸν νόμον, καὶ φόνον ταύτης πολμήσουσι· συγχωρεῖ τὸ ἔλαττον κακὸν, ἵνα κωλύσῃ τὸ μείζον· καὶ φησὶν· “Ἐὰν μισήσῃς, ἐξαπόστειλον.” Συναφθήσεται γὰρ ἑτέρῳ, καὶ μετ’ ὁδίνης οὐ βιώσεται. Ἐν τοῖς ἱεροῖς Εὐαγγελίοις παιδεύων ἀρετὴν ἀντικρὺς βοᾷ· “Πᾶς ὁ ἀπολύων τὴν γυναῖκα αὐτοῦ παρεκτὸς λόγου πορνείας, ποιεῖ αὐτὴν μοιχευθῆναι· καὶ ὁ ἀπολελιγμένην γαμῶν μοιχεύεται.” Καὶ ἐνταῦθα δὲ ταυτὸ τοῦτο αἰνίττεται. Γυμνωθήσεται, φησὶ, τὰ κεκρυμμένα ἡμῶν βουλευματα, λέγει Κύριος παντοκράτωρ. Κἂν μὴ διὰ τινὰ πρόφασιν δικαίαν καὶ εὐλογον διαλύσῃτε τὸν γάμον, κριτὴς ἡμῶν ἔσται τῶν ὅλων ὁ Κύριος. Τοι γαροῦν, Φυλάξασθε ἐν τῷ πνεύματι ἡμῶν, καὶ μὴ ἐγκαταλίπητε τὴν συνθήκην. Χαλινώσατε, φησὶ, τὰς κακὰς ὁρμὰς, καὶ τὰς περὶ τοῦ γάμου γεγενημένας μὴ διασπάσῃτε συνθήκας.

*Commentary on 1 Corinthians vii. 10, 11.*²

Τῆς Εὐαγγελικῆς νομοθεσίας ἀνέμνησεν. Ὁ γὰρ Κύριος ἐν τοῖς ἱεροῖς Εὐαγγελίοις ἔφη· Πᾶς ὁ ἀπολύων τὴν γυναῖκα αὐτοῦ παρεκτὸς λόγου πορνείας, ποιεῖ αὐτὴν μοιχευθῆναι. Διὸ τοῦτο προστέθεικεν· Οὐκ ἐγὼ ἀλλ’ ὁ Κύριος. Τὸ δὲ, Μενέτω ἄγαμος ἢ τῷ ἀνδρὶ καταλλαγήτω, οὐκ ἔστιν ἐναντίον τῷ, Μὴ ἀποστερεῖτε ἀλλήλους εἰ μὴ τι ἂν ἐκ συμφώνου. Ἐκεῖνα γὰρ τοῖς μὴ δι’ ἄλλην πρόφασιν χωριζομένοις, ἀλλὰ διὰ μόνην ἐγκράτειαν, εἴρηται· ἐνταῦθα δὲ τοῖς περὶ ἐτέρων πραγμάτων ζυγομαχοῦσι νομοθετεῖ. Καὶ πειράται μὲν ἀρραγῇ φυλάξαι τοῦ γάμου τὴν ζεύγλιν· συγκατιῶν δὲ τῇ ἀσθενείᾳ, τῷ χωριζομένῳ νομοθετεῖ τὴν ἐγκράτειαν· καὶ ταύτῃ κωλύων τὴν τοῦ γάμου διαίρεσιν. Ἀπειρῶν γὰρ ἑτέρῳ συνάπτεσθαι, πρὸς τὸν πρότερον γάμον ἐπαυελθεῖν μέρος ἐκάτερον συνωθεῖ.

¹ Migne's Ed. tom. iii. p. 1973.

² *Ibid.* tom. iii. p. 276.

*Commentary on Romans vii.*¹

Μοιχεύτριαν καλεῖ, φησὶν, ὁ νόμος, οὐ τὴν μετὰ τὴν τοῦ ὁμόζυγος τελευτὴν συναπτομένην ἑτέρῳ, ἀλλὰ τὴν ἔτι περιόντος τοῦ συνοικοῦντος ἄλλῃ συζευγνυμένην· ταύτην γὰρ, ὡς ἐξυβρίζουσιν εἰς τὸν νόμον τοῦ γάμου, τιμωρεῖσθαι κελεύει. Εὐδηλον τοίνυν ὡς, τοῦ ἀνδρὸς δεξαμένου τοῦ βίον τὸ πέρας, ἔννομον, ἀλλ' οὐ παράνομον, τὸ ἑτέρῳ γήμασθαι τὴν χηρεύουσιν. Καὶ ἦδει μὲν ὁ θεῖος Ἀπόστολος ὡς ἄδειαν καὶ τοῖς ζῶσιν ὁ νόμος ἐδεδώκει διαζευγνύειν τὸν γάμον, ὅταν οὐ καταθύμιος ᾖ. Ἀλλὰ τῆς Δεσποτικῆς διδασκαλίας ἐπήκουσεν, ἥ τὸν Μωϋσέα πρὸς τὴν Ἰουδαίων σκληροκαρδίαν τοῦτον ἔφη δεδωκέναι τὸν νόμον, τὸν δὲ τῆς φύσεως νόμον οὐ ταῦτα προστεθεικέναι. Ἐνα γὰρ ἄνδρα, φησὶ, καὶ μίαν γυναῖκα ἐδημιούργησεν ὁ Θεὸς, ἐν αὐτῇ τῇ διαπλάσει τὸν περὶ τοῦ γάμου νόμον τιθεῖς.

S. AMBROSE.

*De Abraham, lib. i. § 8.*²

Quid hoc fecisti mihi? Quare non dixisti mihi quia uxor tua est: sed dixisti mihi quia soror tua est: et sumpseram eam mihi uxorem? Et nunc ecce mulier tua ante te. Etsi natura ferus ac barbarus, tamen significat etiam exteris ac barbaris moribus esse curam pudoris, et adulterii etiam sibi crimen cavendum. Qui praetendit ignorantiam, condemnat intemperantiam.

Lib. i. § 25.³

Sed et vos moneo, viri, maxime qui ad gratiam Domini tenditis, non commisceri adulterino corpori (qui enim se jungit meretrici unum corpus est) nec dare hanc occasionem divortii mulieribus. Nemo sibi blandiatur de legibus hominum. Omne stuprum adulterium est, nec viro licet quod mulieri non licet. Eadem a viro, quae ab uxore, debetur castimonia. Quidquid in eam quae non sit legitima uxor, commissum fuerit adulterii damnatur crimine. Ergo advertistis quid debeatis cavere, ne quis sacramentis se indignum praebeat.

*Expositio Evangelica secundum Lucam, lib. viii. § 2 (in xvi. 18).*⁴

Noli ergo uxorem dimittere, ne Deum tuae copulae diffitearis auctorem. Etenim si alienos, multo magis uxoris debes tolerare et emendare mores. Audi quid dixerit Dominus: *Qui dimittit mulierem, facit eam moechari.* Etenim cui non licet, vivente viro, mutare

¹ Migne's Ed. tom. iii. p. 114.² *Ibid.* tom. i. p. 423.³ *Ibid.* tom. i. p. 431.⁴ *Ibid.* tom. i. p. 1766.

conjugium, potest obrepere libido peccandi. Itaque qui auctor erroris, etiam reus culpae est. Quo cum parvulis feta dimittitur? Quo titubanti vestigio grandaeva detruditur? Durus, si excludas parentem, pignora teneas, ut ad contumeliam charitatis, addas etiam pietatis injuriam; durus, si propter matrem etiam filios simul pellas; cum magis redimere a patre liberi debeant culpam parentis. Quam periculosum si fragilem adolescentulae aetatem errori offeras! Quam impium, si ejus destituas senectutem, ejus defloraveris juventutem! Ergo inhonoratis stipendiis et veteranum imperator dimittat ingloriam, atque imperii sui possessione detrudat; et rusticum laboris sui effectum agro suo propulset agricola? An quod in subditos nefas est, in comparem fas est.

Dimittis ergo uxorem quasi jure, sine crimine; et putas id tibi licere, quia lex humana non prohibet; sed divina prohibet. Qui hominibus obsequeris, Deum verere. Audi legem Domini, cui obsequuntur etiam qui leges ferunt: *Quae Deus conjunxit, homo non separet.*

Sed non solum hic coeleste praeceptum, sed quoddam etiam opus Dei solvitur. Paterisne, oro, liberos tuos, vivente te, esse sub vitrico; aut incolumi matre, degere sub noverca? Pone, si repudiata non nubat. Et haec viro tibi debuit displicere, cui adultero fidem servat? Pone, si nubat. Necessitatis illius tuum crimen est; et conjugium quod putas, adulterium est. Quid enim refert, utrum id aperta criminis confessione, an mariti specie adulter admittas; nisi quod gravius est legem criminis fecisse quam furtum?

Sed fortasse dicit aliquis: Quomodo *Moyse* mandavit dari librum repudii, et dimittere uxorem? Qui hoc dicit, Judaeus est; qui hoc dicit, Christianus non est. Et ideo quia hoc objicit, quod objectum est Domino, respondeat ei Dominus; *ad duritiam*, inquit, *cordis vestri permisit vobis Moyse dare librum repudii, et dimittere uxores: ab initio autem non fuit sic.* Moyse permisit, inquit, non Deus jussit; ab initio autem Dei lex est. Quae est lex Dei? *Relinquet homo patrem et matrem et adhaerebit uxori suae, et erunt ambo in carne una.* Ergo qui dimittit uxorem, carnem suam scindit, dividit corpus.

Expositio Evangelica secundum Lucam, lib. viii. § 9 (in xvi. 18).¹

Tamen quia supra proposuit regnum Dei evangelizare, et cum dixisset de lege unum apicem non posse cadere, subiecit: *Omnis qui dimittit uxorem suam, et ducit alteram, moechatur.* Recte admonet

¹ Migne's Ed. tom. i. p. 1767.

Apostolus dicens sacramentum hoc magnum esse de Christo et Ecclesia. Invenis igitur conjugium quod nemo dubitet a Deo conjunctum, cum ipse dicat: *Nemo venit ad me, nisi Pater meus, qui misit me, attraxerit cum*; ille enim solus potuit has nuptias copulare. Et ideo mystice Salomon dixit: *A Deo praeparabitur viro uxor*. Vir Christus, uxor ecclesia est; charitate uxor, integritate virgo.

S. CHROMATIUS.

*On the Sermon on the Mount, trac. x.*¹

Unde nunc non immerito Dominus ac Salvator noster, sublata illa licentia, antiquae constitutionis suae praecepta restaurat. Jubet namque matrimonii castum conjugium indissolubili lege servari, ostendens conjugii legem a se esse primitus institutam. Ipse enim ait: *Quod ergo Deus conjunxit in unum, homo non separet*. Quo dicto et passivam Judaeorum licentiam, et stultam ac miserabilem Manichaeorum praesumptionem, qui negant a Deo esse conjugia, hujus sententiae pronuntiatione damnavit, dicens, *excepta causa fornicationis* uxorem non licere dimitti: aperte demonstrans, eum contra Dei agere voluntatem, qui matrimonium a Deo junctum illicita divortii separatione temerare praesumpserit. Unde non ignorent, quam grave apud Deum damnationis crimen incurrant, qui per effrenatam libidinis voluptatem (absque fornicationis causa) dimissis uxoribus, in alia volunt transire conjugia. Quod idcirco se credunt impune committere, quia humanis et saeculi legibus id videtur permissum, nescientes, in hoc se gravius ac magis delinquere, quia humanas leges divinis praeferant; ut quod illicitum Deus esse constituit, ideo licitum credant quia ab homine sit libere permissum. Sed sicuti uxorem caste et pure viventem dimittere fas non est; ita quoque adulteram dimittere permissum est, quia ipsa mariti consortio fecit se indignam, quae in corpus suum peccando, Dei templum ausa est violare.

S. JEROME.

*Epistola lxxvii, ad Oceanum. De morte Fabiolae.*²

Tanta prior maritus vitia habuisse narratur, ut ne scortum quidem et vile mancipium ea sustinere posset. Quae si voluero dicere, perdam virtutem feminae, quae maluit culpam subire dissidii, quam corporis sui infamare partem, et maculas ejus detegere. Hoc solum proferam, quod verecundae matronae et Christianae satis est. Prae-

¹ Migne's Ed. p. 351 (*Pat. Lat.* tom. xx.). ² *Ibid.* tom. i. p. 690.

cepit Dominus uxorem non debere dimitti, excepta causa fornicationis: et si dimissa fuerit, manere innuptam. Quidquid viris jubetur, hoc consequenter redundat in feminas. Neque enim adultera uxor dimittenda est, et vir moechus tenendus. "Si quis meretrici jungitur, unum corpus facit": ergo et quae scortatori impuroque sociatur, unum cum eo corpus efficitur. Aliae sunt leges Caesarum, aliae Christi: aliud Papinianus, aliud Paulus noster praecipit. Apud illos viris impudicitiae frena laxantur: et solo stupro atque adulterio condemnato, passim per lupanaria et ancillulas libido permittitur: quasi culpam dignitas faciat, non voluntas. Apud nos quod non licet feminis, aequè non licet viris; et eadem servitus pari conditione censetur. Dimisit ergo, ut aiunt, vitiosum: dimisit illius et illius criminis noxium: dimisit (pene dixi) quod, clamante vicinia, uxor sola non prodidit. Sin autem arguitur, quare repudiato marito, non innupta permanserit, facile culpam fatebor, dum tamen referam necessitatem. *Melius est*, inquit Apostolus, *nubere, quam uri*. Adolescentula erat, viduitatem suam servare non poterat.

Igitur et Fabiola, quia persuaserat sibi, et putabat a se virum jure dimissum, nec Evangelii vigorem noverat, in quo nubendi universa causatio, viventibus viris, feminis amputatur, dum multa diaboli vitat vulnera, unum incauta vulnus accepit.

Sed quid ego in abolitis et antiquis moror, quaerens excusare culpam, cujus paenitentiam ipsa confessa est? Quis hoc crederet, ut post mortem secundi viri in semetipsam reversa, quo tempore solent viduae negligentes, jugo servitutis excusso, agere se liberius, adire balneas, volitare per plateas, vultus circumferre meretricios; saccum indueret ut errorem publice fateretur; et tota urbe spectante Romana ante diem Paschae in Basilica quondam Leterani, qui Caesariano truncatus est gladio, staret in ordine penitentium, Episcopo, Presbyteris, et omni populo collacrymantibus, sparsum erinem, ora lurida, squalidas manus, sordida colla submitteret? . . . Sic dolebat, quasi adulterium commisisset, et multis impendiis medicaminum unum vulnus sanare cupiebat.

Epistola lv. cap. 3.¹ (To Amandus, a Priest of Bordeaux.)

Quaerendum ab eo, id est a me, utrum mulier relicto viro adultero, et sodomita, et alio per vim accepto, possit absque poenitentia communicare Ecclesiae, vivente adhuc eo quem prius reliquerat. Quod

¹ Migne's Ed. tom. i. p. 562.

legens, illius versiculi recordatus sum : *Ad excusandas excusationes in peccatis.* Omnes enim homines vitiis nostris favemus : et quod propria facimus voluntate, ad naturae referimus necessitatem. Quomodo si dicat adolescens : vim patior corporis, me ad libidinem ardor impellit, ipsa organa membrorum genitalium, et compositio corporis, femineos quaerit amplexus.

Responde itaque sorori, quae a nobis super suo statu quaerit, non nostram, sed Apostoli sententiam. *An ignoratis, fratres, scientibus enim Legem loquor, quoniam lex dominatur homini, quanto tempore vivit? Mulier enim quae sub viro est, vivente viro, astricta est Legi. Quod si mortuus fuerit vir ejus liberata est a lege viri. Ergo, vivente viro, adultera erit, si duxerit alterum virum.* Et in alio loco : *Mulier alligata est, quanto tempore vivit vir ejus. Si autem dormierit vir ejus, liberata est : cui vult nubat, tantum in Domino.* Omnes igitur causationes Apostolus amputans, apertissime definivit, vivente viro adulteram esse mulierem, si alteri nupserit. Nolo mihi proferas raptoris violentiam, matris persuasionem, patris auctoritatem, propinquorum catervam, servorum insidias atque contemptum, damna rei familiaris. Quamdiu vivit vir, licet adulter sit, licet sodomita, licet flagitiis omnibus coopertus, et ab uxore propter haec scelera derelictus, maritus ejus reputatur, cui alterum virum accipere non licet. Nec Apostolus haec propria auctoritate decernit, sed Christo in se loquente, Christi verba secutus est, qui ait in Evangelio : *Qui dimittit uxorem suam, excepta causa fornicationis, facit eam moechari : et qui dimissam acceperit, adulter est.* Animadvertite quid dicat : *Qui dimissam acceperit, adulter est :* sive ipsa dimiserit virum, sive a viro dimissa sit, adulter est qui eam acceperit. Unde et Apostoli gravem conjugii sarcinam intelligentes : *Si ita est, inquit, non expedit homini uxorem accipere.* Ad quos Dominus : *Qui potest, inquit, capere, capiat.* Statimque sub exemplo trium eunuchorum, virginitatis infert beatitudinem, quae nulla carnis lege tenetur.

Neque satis animadvertere potui, quid sit quod dicere voluit, alio viro per vim accepto. Quid est, per vim accepto? Congregata videlicet multitudine, nolentem rapuit : et quare postea raptorem rapta non dimisit? Legat libros Moysi, et inveniet desponsatam viro, si in civitate fuerit oppressa, et non clamaverit, puniri quasi adulteram. Si autem in agro oppressa sit, innoxiam esse a scelere ; et violentum legibus subjacere. Ergo et ista soror, quae, ut dicit, vim passa est, ut alteri jungeretur, si vult corpus Christi accipere, et

non adultera reputari, agat poenitentiam : ita duntaxat, ut secundo viro, qui non appellatur vir, sed adulter, a tempore poenitentiae non copuletur. Quod si ei durum videtur, et semel dilectum non potest derelinquere, nec praeferre Dominum voluptati, audiat Apostolum conclamantem : *Non potestis calicem Domini bibere, et calicem daemoniorum. Non potestis mensae Domini communicare, et mensae daemoniorum.* Et in alio loco : *Quae communicatio luci ac tenebris? Qui consensus Christo et Belial?* Rem novam loquor, imo non novam, sed veterem, quae veteris Testamenti auctoritate firmatur. Si reliquerit secundum virum, et reconciliari voluerit priori, non potest. Scriptum est enim in Deuteronomio : *Si acceperit homo uxorem, et habuerit eam : et non invenerit gratiam in conspectu ejus propter aliquam foeditatem, scribet libellum repudii, et dabit in manus ejus ; et dimittet eam de domo sua. Cumque egressa alterum maritum duxerit ; et ille quoque oderit eam, dederitque ei libellum repudii, et dimiserit de domo sua, vel certe mortuus fuerit, non poterit prior maritus recipere eam in uxorem : quia polluta est, et abominabilis facta est coram Domino. Nec peccare facias terram tuam, quam Dominus Deus tuus tradidit tibi possidendam.* Unde obsecro te, ut consoleris eam, imo provoces ad salutem. Putridae carnes ferro indigent et cauterio ; nec est medicinae culpa, sed vulneris, cum clementi crudelitate non parcat medicus, ut parcat, saevit, ut misereatur.

Ad Jovinianum, lib. i. cap. 10 (commenting on 1 Cor. vii. 10).¹

Docet enim, juxta sententiam Domini, uxorem, excepta causa fornicationis, non repudiandam ; et repudiatam, vivo marito, alteri non nubere, aut certe viro suo reconciliari debere.

In Malachiam ii. 14 sqq.²

Et uxorem adolescentiae tuae noli despiciere, ut quae tibi virginali primum juncta est matrimonio, perseveret usque ad senectutem. Sed poterat fieri, ut principes, sacerdotes, Levitae, populus responderent : Praecepit Deus per Moysen, ut cum odio habuerimus uxores, dimittamus eas. Et legendum est : Dicis mihi scriptum est : *Cum odio habueris uxorem tuam, dimitte, dicit Dominus Deus Israel.* Statimque respondit : hoc quidem in Lege praeceptum est, sed propter duritiam cordis vestri. Quod plenius Dominus in Evangelio prosequitur : Quicumque autem, excepta causa fornicationis, uxorem inique dimiserit, operiet vestimentum ejus iniquitas, id est, corpus quo anima vestitur, dicit Dominus exercituum : ut in quo peccavit, in ipso puniatur.

¹ Migne's Ed. tom. ii. p. 223.

² *Ibid.* tom. vi. p. 1562.

*Commentary on S. Matthew xix.*¹

(v. 1.) De Galilaea venerat ad Judaeam; idcirco Pharisaeorum Scribarumque factio interrogat eum: utrum liceat homini dimittere uxorem suam qualibet causa, ut quasi cornuto teneant eum syllogismo: et quodcumque responderit, captioni pateat. Si dixerit, dimittendas esse uxores qualibet ex causa, et ducendas alias, pudicitiae praedicator sibi videbitur docere contraria. Si autem responderit, non omnem ob causam debere dimitti, quasi sacrilegii reus tenebitur; et adversus doctrinam Moysi ac per Moysen Dei, facere judicabitur. Igitur Dominus sic responsionem temperat, ut decipulam eorum transeat, Scripturam sanctam adducens in testimonium, et naturalem legem, primamque Dei sententiam secundae opponens; quae non voluntate Dei, sed peccantium necessitate concessa est.

(v. 4.) *Qui respondens ait eis: non legistis, quia qui fecit ab initio, masculum et feminam fecit eos?* Hoc in exordio Geneseos scriptum est. Dicendo autem, *masculum et feminam*, ostendit secunda vitanda conjugia, non enim ait, *masculum et feminas*, quod ex priorum repudio quaerebatur: sed *masculum et feminam*, ut unius conjugis consortia necterentur.

(vv. 5, 6.) *Et dixit: propter hoc dimittet homo patrem et matrem, et adhaerebit uxori suae: et erunt duo in carne una. Itaque jam non sunt duo, sed una caro.* Similiter ait, *adhaerebit uxori suae*, non uxoribus. *Et erunt duo in carne una.* Praemium nuptiarum, e duabus unam carnem fieri. Castitas juncta spiritui, unus efficitur spiritus.

Quod ergo Deus conjunxit, homo non separet. Deus conjunxit, unam faciendo carnem viri et feminae; hanc homo non potest separare, nisi forsitan solus Deus. Homo separat, quando propter desiderium secundae uxoris, primam dimittit. Deus separat, qui et conjunxerat, quando ex consensu propter servitutem Dei (eo quod tempus in arcto sit) sic habemus uxores, quasi non habentes.

(v. 7.) *Dicunt illi: Quid ergo Moyses mandavit dari libellum repudii, et dimittere.* Aperiunt calumniam quam paraverant. Et certe Dominus non propriam sententiam protulerat, sed veteris historiae et mandatorum Dei fuerat recordatus.

(v. 8.) *Ait illis: quoniam Moyses ad duritiam cordis vestri permisit vobis dimittere uxores vestras: ab initio autem non fuit sic.* Quod dicit istius nodi est: Numquid potest Deus sibi esse contrarius, ut aliud ante jusserit, et sententiam suam novo frangat imperio? non

¹ Migne's Ed. tom. vii. p. 133.

ita sentiendum est : sed Moyses cum videret, propter desiderium secundarum conjugum, quae vel ditiores, vel juniores, vel pulchriores essent, primas uxores interfici, aut malam vitam ducere, maluit indulgere discordiam, quam odia et homicidia perseverare. Simulque considera, quod non dixit : *Propter duritiam cordis vestri permisit vobis Deus*, sed *Moyses* : ut juxta Apostolum consilium sit hominis, non imperium Dei.

(c. 9.) *Dico autem vobis, quia quicumque dimiserit uxorem suam, nisi ob fornicationem, et aliam duxerit, moechatur. Et qui dimissam duxerit, moechatur.* Sola fornicatio est quae uxoris vincat affectum : immo cum illa unam carnem in aliam diviserit, et se fornicatione separaverit a marito, non debet teneri : ne virum quoque sub maledicto faciat, dicente Scriptura : *Qui adulteram tenet, stultus et impius est.* Ubicumque est igitur fornicatio et fornicationis suspicio, libere uxor dimittitur. Et quia poterat accidere, ut aliquis calumniam faceret innocenti, et ob secundam copulam nuptiarum, veteri crimen impingeret, sic priorem dimittere jubetur uxorem, ut secundam, prima vivente, non habeat. Quod enim dicit tale est : Si non propter libidinem, sed propter injuriam dimittis uxorem : quare expertus infelices priores nuptias, novarum te immittis periculo ? Necnon quia poterat evenire, ut juxta eandem legem uxor quoque marito daret repudium, eadem cautela praecipitur, ne secundum accipiat virum. Et quia meretrix, et quae semel fuerat adultera, opprobrium non timebat, secundo praecipitur viro, quod si talem duxerit, sub adulterii sit crimine.

(c. 10.) *Dicunt ei discipuli ejus : Si ita est causa homini cum uxore, non expedit nubere.* Grave pondus uxorum est, si excepta causa fornicationis, eas dimittere non licet. Quid enim si temulenta fuerit, si iracunda, si malis moribus, si luxuriosa, si gulosa, si vaga, si jurgatrix, si maledica, tenenda erit istiusmodi ? Volumus nolumus sustinenda est. Cum enim essemus liberi, voluntarie nos subjecimus servituti. Videntes ergo Apostoli grave uxorum jugum, proferunt motum animi sui, et dicunt : *si ita est causa homini cum uxore, non expedit nubere.*

S. HILARY OF POICTIERS.

Commentary on S. Matthew, c. iv. § 22.¹

Aequitatem in omnes concilians, manere eam maxime in conjugiorum pace praecepit ; legi addens plura, nihil demens. Nec sane profectus argui potest. Nam cum lex libertatem dandi repudii ex

¹ Migne's Ed. tom. i. p. 939.

libelli auctoritate tribuisset, nunc marito fides evangelica non solum voluntatem pacis indixit, verum etiam reatum coactae in adulterium uxoris imposuit, si alii ex discessionis necessitate nubenda sit: nullam aliam causam desinendi a conjugio praescribens, quam quae virum prostitutae uxoris societate pollueret.

S. AUGUSTINE.

De Sermone Domini in Monte, lib. i. §39.³

Dictum est autem, Quicumque dimiserit uxorem suam, det illi libellum repudii. Haec justitia minor est Pharisaeorum, cui non est contrarium quod Dominus dicit, *Ego autem dico vobis, Quicumque dimiserit uxorem suam excepta fornicationis causa, facit eam moechari; et qui solutam a viro duxerit, moechatur.* Non enim qui praecepit dari libellum repudii hoc praecepit, ut uxor dimittatur: sed, *Qui dimiserit*, inquit, *det illi libellum repudii*; ut iracundiam temerariam projicientis uxorem libelli cogitatio temperaret. Qui ergo dimittendi moram quaesivit, significavit quantum potuit duris hominibus, se nolle discidium. Et ideo ipse Dominus alio loco de hoc interrogatus, ita respondit: *Hoc Moyses propter duritiam vestram fecit.* Quantumvis enim durus esset qui vellet dimittere uxorem, cum cogitaret libello repudii dato jam sine periculo eam posse nubere alteri, facile placaretur. Dominus ergo ad illud confirmandum ut non facile uxor dimittatur, solam causam fornicationis excepit: caeteras vero universas molestias si quae forte exstiterint, jubet pro fide conjugali et pro castitate fortiter sustineri; et moechum dicit etiam virum qui eam duxerit, quae soluta est a viro.

Cujus rei apostolus Paulus terminum ostendit, quia tamdiu observandum dicit, quamdiu vir ejus vivit: illo autem mortuo, dat nubendi licentiam. Hanc enim etiam ipse regulam tenuit, et in ea non suum consilium, sicut in nonnullis monitis, sed praeceptum Domini jubentis ostendit, cum ait: *Eis autem qui sunt in conjugio praecipio, non ego, sed Dominus, mulierem a viro non discedere; quod si discesserit, manere innuptam, aut viro suo reconciliari: et vir uxorem non dimittat.* Credo, simili forma, ut si dimiserit, non ducat aliam, aut reconcilietur uxori. Fieri enim potest ut dimittat uxorem causa fornicationis, quam Dominus exceptam esse voluit. Jamvero si nec illi nubere conceditur vivo viro a quo recessit, neque huic alteram ducere viva uxore quam dimisit; multo minus fas est illicita cum quibuslibet stupra committere. Beatiora sane conjugia judicanda

³ Migne's Ed. tom. iii. p. 1248.

sunt, quae sive filiis procreatis, sive etiam ista terrena prole contempta, continentiam inter se pari consensu servare potuerint: quia neque contra illud praeceptum fit, quo Dominus dimitti conjugem vetat; non enim dimittit, qui cum ea non carnaliter, sed spiritualiter vivit: et illud servatur, quod per Apostolum dicitur, *Reliquum est, ut qui habent uxores, quasi non habentes sint.*

De Sermone Domini in Monte, lib. i. c. 43.¹

Sed consulamus Apostolum, ne aliquid temere dicamus: *His qui sunt in conjugio*, inquit, *praecipio, non ego, sed Dominus, uxorem a viro non discedere; quod si discesserit, manere innuptam, aut viro suo reconciliari.* Potest enim fieri ut discedat ea causa qua Dominus permittit. Aut si feminae licet virum dimittere etiam praeter causam fornicationis, et non licet viro; quid respondebimus de hoc quod dixit posterius, *Et vir uxorem ne dimittat?* Quare non addidit, excepta causa fornicationis, quod Dominus permittit; nisi quia similem formam vult intelligi, ut si dimiserit (quod causa fornicationis permittitur), maneat sine uxore, aut reconcilietur uxori? Non enim male reconciliaretur vir illi mulieri, quam cum lapidare nemo ausus esset, dixit ei Dominus: *Vade, et ride deinceps ne pecces.* Quia et qui dicit, Non licet dimittere uxorem, nisi causa fornicationis; cogit retinere uxorem, si causa fornicationis non fuerit: si autem fuerit, non cogit dimittere, sed permittit: sicut dicitur, Non liceat mulieri nubere alteri, nisi mortuo viro; si ante viri mortem nupserit, rea est: si post viri mortem non nupserit, non est rea; non enim iussa est nubere, sed permissa. Si ergo par forma est in isto jure conjugii inter virum et mulierem, usque adeo ut non tantum de femina, idem Apostolus dixerit, *Mulier non habet potestatem sui corporis, sed vir;* sed etiam de illo non tacuerit dicens, *Similiter et vir sui corporis potestatem non habet, sed mulier;* si ergo similis forma est, non oportet intelligi licere mulieri virum dimittere, nisi causa fornicationis, sicut et viro.

De Sermone Domini in Monte, lib. i. § 46.²

Porro si infidelitas fornicatio est, et idololatria infidelitas, et avaritia idololatria, non est dubitandum et avaritiam fornicationem esse. Quis ergo jam quamlibet illicitam concupiscentiam potest recte a fornicationis genere separare, si avaritia fornicatio est? Ex quo intelligitur, quod propter illicitas concupiscentias, non tantum quae

¹ Migne's Ed. tom. iii. p. 1251.

² *Ibid.* tom. iii. p. 1252.

in stupris cum alienis viris aut feminis committuntur, sed omnino quaslibet, quae animam corpore male utentem a lege Dei aberrare faciunt, et perniciose turpiterque corrumpi, possit sine crimine et vir uxorem dimittere, et uxor virum, quia exceptam facit Dominus causam fornicationis; quam fornicationem, sicut supra consideratum est, generalem et universalem intelligere cogimur.

De Sermone Domini in Monte, lib. i. c. 48.¹

Quod autem dicit, *Quisquis solutam a viro duxerit, moechatur*; quaeri potest utrum quomodo moechatur ille qui ducit, sic et illa quam ducit. Jubetur enim et illa manere innupta, aut viro reconciliari: sed si discesserit, inquit, a viro. Multum autem interest utrum dimittat, an dimittatur. Si enim ipsa virum dimiserit, et alteri nupserit; videtur cupiditate mutandi conjugii virum priorem reliquisse, quae sine dubio adulterina cogitatio est. Si autem dimittatur a viro, cum quo esse cupiebat; moechatur quidem qui eam duxerit, secundum Domini sententiam, sed utrum et ipsa tali crimine teneatur, incertum est. Quamvis multo minus inveniri possit quomodo cum vir et mulier pari consensu sibi misceantur, unus eorum moechus sit, et non sit alter. Huc accedit, quia si moechatur ille ducendo eam, quae soluta est a viro, quamquam non dimiserit, sed dimissa sit, ipsa eum facit moechari, quod nihilominus Dominus vetat. Ex quo colligitur, sive dimissa fuerit, sive dimiserit, oportere illam manere innuptam, aut viro reconciliari.

Retractationes, lib. i. cap. 19, § 6.²

Item de praecepto quo prohibetur uxor dimitti, nisi propter fornicationem, hic quidem scrupulosissime disputavi. (Lib. i. c. 91.) Sed quam velit Dominus intelligi fornicationem, propter quam liceat dimittere uxorem; utrum eam quae damnatur in stupris, an illam de qua dicitur, *Perdidisti omnem qui fornicatur abs te*, in qua utique et ista est (neque enim non fornicatur a Domino, qui tollens membra Christi, facit ea membra meretricis); etiam atque etiam cogitandum est atque requirendum. Nec volo in re tanta tamque ad dignoscendum difficili putare lectorem, istam sibi nostram disputationem debere sufficere: sed legat et alia, sive nostra quae postea scripta sunt, sive aliorum melius considerata atque tractata; vel ipse si potest, ea quae hic merito movere possunt, vigilantiore atque intelligentiore mente discutiat. Non quia omne peccatum fornicatio est;

¹ Migne's Ed. tom. iii. p. 1253.

² *Ibid.* tom. i. p. 616.

neque enim omnem peccantem Deus perdit, qui quotidie sanctos suos exaudit, dicentes, *Dimitte nobis debita nostra*: cum perdat omnem qui fornicatur ab eo. Sed quatenus intelligenda atque limitanda sit haec fornicatio, et utrum etiam propter hanc liceat dimittere uxorem, latebrosissima quaestio est. Licere tamen propter istam quae in stupris committitur, nulla quaestio est. Et ubi dixi hoc permissum esse, non jussum, non attendi aliam Scripturam dicentem: *Qui tenet adulteram, stultus et impius est*.¹ Nec sane adulteram dixerim fuisse deputandam illam mulierem, etiam posteaquam audivit a Domino, *Nec ego te damnabo; vade, deinceps jam noli peccare*, si hoc obedienter audivit.

*Contra Faustum, lib. xix. c. 3.*²

Dictum est, Qui voluerit uxorem dimittere, det ei repudium; ego autem dico, quicumque uxorem suam dimiserit, excepta causa fornicationis, et ipsam moechari faciet, et is erit moechus, si postea alteram duxerit.

*De Bono Conjugali, c. 3.*³

Illud nunc dicimus, secundum istam conditionem nascendi et moriendi, quam novimus, et in qua creati sumus, aliquid boni esse conjugium masculi et foeminae: cujus confoederationem ita divina Scriptura commendat, ut nec dimissae a viro nubere liceat alteri, quamdiu vir ejus vivit; nec dimisso ab uxore liceat alteram ducere, nisi mortua fuerit, quae recessit.

De Bono Conjugali, c. 4.

Ita mulier si fide conjugali violata fidem servet adultero, utique mala est: sed si nec adultero, pejor est. Porro si eam flagitii poeniteat, et ad castitatem rediens conjugalem, pacta ac placita adulterina rescindat, miror si eam fidei violatricem vel ipse adulter putabit.

*De Bono Conjugali, c. 7.*⁴

Qui enim dimittit uxorem suam excepta causa fornicationis, facit eam moechari. Usque adeo foedus illud initum nuptiale cujusdam sacramenti res est, ut nec ipsa separatione irritum fiat: quandoquidem vivente viro, et a quo relicta est, moechatur, si alteri nupserit; et ille hujus mali causa est qui reliquit.

Miror autem si quemadmodum licet dimittere adulteram uxorem, ita liceat ea dimissa alteram ducere. Facit enim de hac re sancta

¹ Prov. xviii. 22.

² Migne's Ed. tom. viii. p. 349.

³ *Ibid.* tom. vi. p. 375.

⁴ *Ibid.* tom. vi. p. 378.

Scriptura difficilem nodum, dicente Apostolo, ex praecepto Domini mulierem a viro non debere discedere; quod si discesserit, manere innuptam, aut viro suo reconciliari: cum recedere utique et manere innupta, nisi ab adultero viro non debeat, ne recedendo ab eo qui adulter non est, faciat eum moechari. Reconciliari autem viro vel tolerando, si se ipsa continere non potest, vel correcto, forsitan juste potest. Quomodo autem viro possit esse licentia ducendae alterius, si adulteram reliquerit, cum mulieri non sit nubendi alteri, si adulterum reliquerit, non video. Quae si ita sunt tantum valet illud sociale vinculum conjugum, ut cum causa procreandi colligetur, nec ipsa causa procreandi solvatur. Possit enim homo dimittere sterilem uxorem, et ducere de qua filios habeat: et tamen non licet; et nostris quidem jam temporibus ac more Romano, nec superducere, ut amplius habeat quam unam vivam: et utique relictā adultera vel relicto adultero possent plures nasci homines, si vel illa alteri nuberet, vel ille alteram duceret. Quod tamen si non licet, sicut divina regula praescribere videtur; quem non faciat intentum, quid sibi velit tanta firmitas vinculi conjugalis? Quod nequaquam puto tantum valere potuisse, nisi alicujus rei majoris ex hac infirma mortalitate hominum quoddam sacramentum adhiberetur, quod deserentibus hominibus atque id dissolvere cupientibus, inconcussum illis maneret ad poenam. Si quidem interveniente divortio non aboletur illa confoederatio nuptialis: ita ut sibi conjuges sint, etiam separati: cum illis autem adulterium committant, quibus fuerint etiam post suum repudium copulati, vel illa viro, vel ille mulieri. Nec tamen nisi in civitate Dei nostri, in monte sancto ejus, talis est causa cum uxore.

Sermon 392, c. 2.¹

Audite, charissimi, membra Christi et matris Catholicae filii. Quod dico competentibus, audiant fideles; quod dico fidelibus, audiant competentes; quod dico competentibus et fidelibus, audiant poenitentes; quod dico fidelibus et competentibus et poenitentibus, audiant catechumeni, audiant omnes: omnes timeant, nemo contemnat. Sit mihi in consolationem vester auditus, ne sit vobis in testimonium dolor meus. Competentibus dico, Fornicari vobis non licet. Sufficiant vobis aut uxores aut nec uxores: concubinas vobis habere non licet. Audiat Deus, si vos surdi estis; audiant Angeli ejus, si vos contemnitis. Concubinas vobis habere non licet. Et si non habetis uxores, non licet vobis habere concubinas, quas postea dimittatis, ut

¹ Migne's Ed. tom. v. p. 1710.

ducatis uxores ; quanto magis damnatio vobis erit, si habere volueritis et concubinas et uxores ? Non vobis licet habere uxores, quarum priores mariti vivunt ; nec vobis, feminae, habere viros licet, quorum priores uxores vivunt. Adulterina sunt ista conjugia, non jure fori, sed jure coeli. Nec eam feminam quae per repudium discessit a marito, licet vobis ducere vivo marito. Solius fornicationis causa licet uxorem adulteram dimittere : sed illa vivente non licet alteram ducere. Et vobis, feminae, nec illos viros a quibus per repudium discesserunt uxores eorum, maritos habere conceditur ; non licet : adulteria sunt, non conjugia. Contemnitur Augustinus, timeatur vel Christus. Nolite imitari turbam malorum, infidelium, filii mei : nolite sequi vias latas, quarum finis ad interitum ducit. Qui baptizatus fuerit, aut continentiam Deo voveat, aut permaneat cum uxore sua, aut si non habet, ducat uxorem.

De Bono Viduitatis, c. 4.¹ (Commenting on 1 Cor. vii. 6, 7.)

Vides autem conjugalem pudicitiam et thori christiani matrimonialem fidem donum esse, et hoc a Deo : ut illud quod ultra liberorum procreandorum necessitatem modum concumbendi aliquatenus concupiscentia carnalis excedit, non nuptiarum sit hoc malum, sed veniale sit propter nuptiarum bonum. Non enim de conjugio, quod copulatur liberorum procreandorum causa, et fide pudicitiae conjugalis, et indissolubili, quamdiu ambo vivunt, matrimonii sacramento, quae omnia bona sunt ; sed de illo immodico carnis usu, qui in infirmitate conjugum agnoscitur, et interventu boni nuptialis ignoscitur, ait Apostolus, *Secundum veniam dico, non secundum imperium*.

De Nuptiis et Concupiscentia, lib. i. c. 11.²

Quoniam sane non tantum fecunditas, ejus fructus in prole est ; nec tantum pudicitia, ejus vinculum est fides ; verum etiam quoddam sacramentum nuptiarum commendatur fidelibus conjugatis, unde dicit Apostolus, *Viri, diligite uxores vestras, sicut et Christus dilexit Ecclesiam* : hujus procul dubio sacramenti res est, ut mas et femina connubio copulati quamdiu vivunt inseparabiliter perseverent, nec liceat, excepta causa fornicationis, a conjuge conjugem dirimi. Hoc enim custoditur in Christo et Ecclesia, ut vivens cum vivente in aeternum nullo divortio separetur. Cujus sacramenti tanta observatio est in civitate Dei nostri, in monte sancto ejus, hoc est, in Ecclesia

¹ Migne's Ed. tom. vi. p. 433.

² *Ibid.* tom. x. p. 420.

Christi, quibusque fidelibus conjugatis, qui sine dubio membra sunt Christi, ut, cum filiorum procreandorum causa vel nubant feminae, vel ducantur uxores, nec sterilem conjugem fas sit relinquere, ut alia fecunda ducatur. Quod si quisquam fecerit, non lege hujus saeculi, ubi interveniente repudio sine crimine conceditur cum aliis alia copulare connubia; quod etiam sanctum Moysen Dominus propter duritiam cordis illorum, Israelitis permisisse testatur: sed lege Evangelii reus est adulterii; sicut etiam illa si alteri nupserit. Usque adeo manent inter viventes semel inita jura nuptiarum, ut potius sint inter se conjuges qui ab alterutro separati sunt, quam cum his quibus aliis adhaeserunt. Cum aliis quippe adulteri non essent, nisi ad alterutrum conjuges permanerent. Denique mortuo viro cum quo verum connubium fuit, fieri verum connubium potest cum quo prius adulterium fuit. Ita manet inter viventes quiddam conjugale, quod nec separatio, nec cum altero copulatio possit auferre. Manet autem ad noxam criminis, non ad vinculum foederis: sicut apostatae anima velut de conjugio Christi recedens, etiam fide perditam sacramentum fidei non amittit, quod lavacro regenerationis accepit. Redderetur enim procul dubio redeunti, si amisisset abscedens. Habet autem hoc qui recesserit ad cumulum supplicii, non ad meritum praemii.

De Conjugiis Adulterinis, lib. i.¹

CAPUT PRIMUM.—1. *In loco Pauli dissensus Pollentii et Augustini. An citra causam fornicationis discedere liceat conjugi sine nuptiis manere volenti.* Prima quaestio est, frater dilectissime Pollenti, earum quas ad me scribens, tanquam consulendo tractasti, quod ait Apostolus, *His autem qui sunt in conjugio praecepit, non ego, sed Dominus, mulierem a viro non discedere; quod si discesserit, manere innuptam, aut viro suo reconciliari: et vir uxorem non dimittat* (1 Cor. vii. 10 et 11), utrum ita sit accipiendum, ut eam prohibuisse nubere intelligatur, quae sine causa fornicationis discessit a viro; id enim sentis: an sicut ego sensi in eis libris quos ante plurimos annos de sermone evangelico scripsi, quem secundum Matthaeum habuit Salvator in monte, illas innuptas manere praeceperit, quae a viris suis ea causa recesserint quae sola permissa est, id est, fornicationis. Videtur enim tibi tunc a viro discedentem feminam nubere non debere, si nulla viri fornicatione compulsa discesserit. Nec attendis, si nullam vir ejus causam fornicationis habuerit, non eam discedentem manere innuptam, sed omnino discedere non debere. Nam utique

¹ Migne's Ed. tom. vi. p. 451.

cui praecipitur, ut si a viro discesserit innupta permaneat, non discedendi aufertur licentia, sed nubendi. Quod si ita est, datur ergo licentia feminis quae continentes esse voluerint, nullum maritorum expectare consensum, ut quod dictum est, *mulierem a viro non discedere*, eis praeceptum esse videtur, quae possent eligere, non continentiam, sed tale divortium quod liceret eis in aliorum nuptias convenire. Proinde dilexerint nullum desiderare concubitum, nullum fere connubium, licebit eis viros suos etiam sine ulla fornicationis causa relinquere, et innuptas secundum Apostolum permanere. Et viri similiter (quoniam par forma est in utrisque), si continentes esse voluerint, etiam uxoribus non consentientibus deserent eas, et sine ullis nuptiis permanebunt. Tunc enim eis, ut putas, alia conjugia liceret inquirere, si fornicationis causa divortium nasceretur. Cum vero ista causa non est, superest, secundum id quod existimas, ut aut conjux non discedat a conjuge, aut si discesserit, sine conjugio maneat, aut ad pristinum conjugium revertatur. Nulla ergo existente causa fornicationis, cuilibet conjugii licebit unum de tribus eligere: aut non discedere a conjuge; aut si discesserit, sic manere; aut si non sic manserit, non alterum quaerere, sed priori se reddere.

CAPUT II.—2. *Non licere conjugi discedere nisi ex fornicationis causa.* Et ubi est quod idem Apostolus, nec ad tempus, ut vacetur orationi, nisi ex consensu, voluit conjuges carnali fraudare invicem debito? Quomodo salvum erit quod ait, *Propter fornicationes autem unusquisque uxorem suam habeat, et unaquaeque virum suum habeat. Uxori vir debitum reddit, similiter autem et uxor viro. Uxor non habet potestatem corporis sui, sed vir, similiter et vir non habet potestatem corporis sui, sed mulier* (I Cor. vii. 2–5)? Hoc quomodo verum erit, nisi quia nolente conjuge, non licet conjugii continere? Nam si licet mulieri sic dimittere virum, ut maneat innupta, non vir habet, sed ipsa sui corporis potestatem: quod etiam de viro intelligitur. Deinde cum dictum est, *Quicumque dimiserit uxorem suam, excepta causa fornicationis, facit eam moechari* (Matt. v. 32); quomodo dictum intellecturi sumus, nisi prohibitum esse homini dimittere uxorem, si nulla causa fornicationis exstiterit? Et dictum est quare, ne scilicet faciat eam moechari: utique ideo, quia etiamsi non ipsa dimiserit, sed dimissa fuerit, erit moecha, si nupserit.

CAPUT III.—*Locus Apostoli de muliere quae a viro fornicante discedit, intelligendus.* Propter hoc ergo tam magnum malum, non licet homini dimittere uxorem, nisi ex causa fornicationis. Tunc enim non ipse dimittendo facit adulteram, sed dimittit adulteram. Quid si ergo

dicat, Dimitto quidem uxorem meam sine ulla causa fornicationis, sed continens permanebo? ideo dicemus eum impune fecisse quod fecit? Quis hoc dicere audebit, qui voluntatem Domini haec dicentis intelligit? Quoniam nec continentiae causa dimitti conjugem voluit, qui solam causam fornicationis excepit.

3. Redeamus igitur ad ipsa Apostoli verba dicentis, *His autem qui sunt in conjugio praecipio, non ego, sed Dominus, uxorem a viro non discedere; quod si discesserit, manere innuptam*; et eum velut interrogemus, et tanquam praesentem quodam modo consulamus: Cur dixisti, Apostole, *quod si discesserit, manere innuptam*? Licetne discedere, an non licet? Si non licet, cur praecipis discedenti ut maneat innupta? Si autem licet, profecto est aliqua causa qua liceat. Haec autem inquisita non invenitur, nisi quam solam Salvator excepit, id est, causa fornicationis. Ac per hoc non praecepit Apostolus mulierem, si discesserit, manere innuptam, nisi quae illa causa discedit a viro, qua sola ei licitum est discedere a viro. Ubi enim dicitur, *Praecipio non discedere; quod si discesserit, manere innuptam*; absit ut contra hoc praeceptum faciat, quae sic discedit ut innupta permaneat. Nisi ergo illa intelligatur cui licet discedere (non autem licet nisi viro fornicante), quomodo jubetur innupta, si discesserit, permanere? Quis est qui dicat: Si discesserit mulier a viro non fornicante, innupta permaneat, cum ei nisi a viro fornicante discedere omnino non liceat? Sensus itaque iste tuus quantum adversetur vinculo conjugali, ubi Dominus nec continentiam voluit suscipi, nisi pari concordique consensu, puto quod jam intelligas.

CAPUT IV.—4. *Apostolus male intellectus de muliere ob continentiae placitum discedente.* Sed rem ipsam paulo apertius proloquamur, et quasi constituamus ante oculos. Ecce placuit continentia mulieri, viro non placuit: discessit ab eo mulier, et coepit vivere continenter, ipsa scilicet casta mansura, sed factura, quod Dominus non vult, adulterum virum; qui cum se non continuerit, alteram quaeret. Quid sumus dicturi mulieri, nisi quod dicit Ecclesiae sana doctrina? Redde debitum viro, ne dum tu quaeris unde amplius honoreris, ille unde ille damnetur inveniat. Hoc enim et illi diceremus, si te nolente continere voluisset. Non enim habes potestatem corporis tui, sed ille: sicut nec ille habet potestatem corporis sui, sed tu. Nolite invicem fraudare, nisi ex consensu. Cum haec atque hujusmodi plura quae ad hoc pertineant dixerimus, placetne tibi ut nobis mulier ex ista tua ratione respondeat? Ego Apostolum audio dicentem, *Praecipio mulierem a viro non discedere; quod si discesserit,*

manere innuptam, aut viro suo reconciliari: ecce discessi, nolo reconciliari viro, sed innupta permaneo. Non enim aut, Si discesserit, manere innuptam, donec viro suo reconcilietur; sed, *manere*, inquit, *innuptam, aut viro reconciliari*. Hoc, inquit, faciat, aut illud: unum e duobus eligendum permisit; non autem in horum alterum compulit. Manere innupta eligo, ac sic praeceptum impleo. Corripe, argue, increpa, utere qua volueris severitate, si nupsero.

CAPUT V.—5. *Refutatur illa interpretatio Apostoli*. Quid huic contradicam; nisi, Apostolum non bene intelligis? Neque enim ille praecepisset, si a viro discesserit, innuptam manere mulierem, nisi eam cui discedere licuisset, illa una videlicet causa, quae ibi propterea tacita est, quia notissima est, hoc est, fornicationis. Hanc enim solam Deus magister excepit, cum de dimittenda loqueretur uxore; deditque intelligi talem formam etiam in viro esse servandam; quoniam non solum mulier non habet potestatem corporis sui, sed vir; sed; sed similiter et vir non habet potestatem corporis sui, sed mulier. Cum ergo tuum maritum arguere de fornicatione non possis, quomodo putas quod ab eo discedis non nubendo excusare, a quo tibi non licet omnino discedere? Cum haec a nobis mulier audierit, puto quod nolis eam sic respondere, ut dicat propterea se manere innuptam, quia sine ulla viri fornicatione discessit; nam ille fornicatus esset, non solum sibi discedere, verum etiam nubere licuisset.

CAPUT VI.—6. *Pollentii sententia, mulieri ab adultero discedenti nuptias cum alio non esse praecepto vetitas, sed tantum propter opprobrium vitandas*. Nequaquam hoc illa diceret cum et ipse sis verecundatus istam mulieribus dare licentiam. Dixisti enim: “Si vir uxorem adulteram dimiserit, et aliam duxerit, mulier tantum opprobrium habebit. Si autem mulier supra dicta causa virum dimiserit, et alii nupserit, non vir tantum, sed et mulier opprobrium habebit.” Cujus sententiae tuae rationem reddens: “Dicent enim, inquis, eam ideo discessisse, ut alium virum sibi conjungeret, etsi talis forte fuerit qualis a quo discessit; perquam facile enim viris est, in hoc morbi vitium irruere. Si autem et ipsum dimiserit, et alii nupserit, magis magisque dicent eam numerositatem virorum appetisse.” Hac reddita ratione concludis, et dicis: “His ergo pertractatis vel etiam discussis, oportet mulierem virum tolerare, aut innuptam manere.” Bonum plane dedisti consilium mulieribus, ut cum sciant sibi esse permissum, si adulteros viros dimiserint, aliis conjugari, non tamen faciant propter opprobrium; sed potius tolerant etiam adulteros viros, ne videantur hac occasione multis velle misceri, eo quod difficile sit ut non

talem inveniatur mulier cui nubat, qualis fuerit quem dimisit, quoniam valde in hunc morbum sunt proclives viri. Cum ergo nos dicimus etiam illi mulieri, quae virum fornicantem dimiserit, alteri nubere non licere, tu autem dicis licere quidem, sed non expedire: utrique procul dubio dicimus eam quae fornicantem virum dimittit, nubere non debere. Verum hoc interest, quod nos, quando conjuges ambo christiani sunt, mulieri, si a viro fornicante discesserit, dicimus non licere alteri nubere, a viro autem non fornicante non licere omnino discedere: tu vero dicis, si mulier a viro non fornicante discesserit, non ei licere alteri nubere, propter praeceptum; si autem a fornicante discesserit, non ei expedire nubere propter opprobrium. Mulierem itaque non nupturam discedere a viro, sive fornicante, sive non fornicante, permittis.

CAPUT VII.—7. *Praecipi ut innupta maneat etiam quae ab adultero discedit.* Porro beatus Apostolus, imo per Apostolum Dominus, quia mulierem non permittit a viro non fornicante discedere; restat ut eam prohibeat, si discesserit, nubere, quam permittit a fornicante discedere. De qua enim dicitur, Si a viro discesserit, non nubat; ea conditione discedere permittitur, ut non nubat. Si ergo elegerit non nubere, non est cur prohibeatur discedere. Sicut illa de qua dicitur, Si se non continet, nubat (1 Cor. vii. 9); hac utique conditione non continere permittitur, ut tamen nubat. Si ergo elegerit nubere, cogi non potest continere. Sicut ergo ista incontinens compellitur nubere, ut possit quod non continet non esse damnable: sic a viro illa discedens, innupta compellitur permanere, ut possit quod discedit non esse culpabile. Culpabiliter autem a viro non fornicante discedit, etiamsi innupta permanserit. Illa ergo innupta manere praecipitur, si discesserit, quae a fornicante discedit. Quae cum ita se habeant, si eo modo intellexerimus Apostolum, ut mulieribus dicamus, Ita nolite discedere a viris vestris etiam pudicis, ut si discedere volueritis, innuptae maneatis; omnes quibus placuerit continentia, etiam non consentientibus viris, existimabunt sibi licere discedere. Quod procul dubio quia permittere non debemus, restat ut quod dictum est, *si discesserit, manere innuptam*, de illa dictum docere debeamus, cui licere discedere, non utique nisi a fornicante, didicimus. Ne si aliter docuerimus, obtentu continentiae perturbemus christiana conjugia, et contra misericordissimum Domini praeceptum dimissos a continentibus mulieribus incontinentes viros, vel a continentibus viris incontinentes mulieres in adulteria compellamus.

CAPUT VIII.—8. *Parem esse in ea re formam viri et mulieris.*

Illud ergo quod Dominus, non quidem in sermone ipso qui exponebatur a nobis, sed tamen alibi ait, *Quicumque dimiserit uxorem suam, nisi ex causa fornicationis, et aliam duxerit, moechatur* (Matt. xix. 9), si hoc modo intelligendum est, ut quicumque causa fornicationis dimiserit et aliam duxerit, non moechetur; non videtur in hac causa par forma esse mariti et uxoris: quandoquidem mulier etiamsi causa fornicationis discesserit a viro et alii nupserit, moechatur; vir autem si eadem causa uxorem dimiserit et aliam duxerit, non moechatur. At si par forma est in utroque, uterque moechatur, si se alteri juxerit, etiam cum se a fornicante disjunxerit. Parem vero esse formam in hac causa viri atque mulieris, ibi ostendit Apostolus (quod saepe commemorandum est), ubi cum dixisset, *Uxor non habet potestatem corporis sui, sed vir*; adjecit atque ait, *Similiter et vir non habet potestatem corporis sui, sed mulier*.

CAPUT IX.—9. *Objectio Pollentii ex loco Matthaei. Refellitur ex simili loco Jacobi. Peccata ignorantium. Ex Marco et Luca Matthaeus intelligendus.* “Cur ergo, inquis, interposuit Dominus causam fornicationis, et non potius generaliter ait, Quicumque dimiserit uxorem suam et aliam duxerit, moechatur; si et ille moechus est,¹ qui dimissa fornicante muliere alteram ducit?” Credo, quia illud quod majus est, hoc Dominus commemorare² voluit. Majus enim adulterium esse quis negat, uxore non fornicante dimissa alteram ducere, quam si fornicantem quisque dimiserit, et tunc alteram duxerit? Non quia et hoc adulterium non est; sed quia minus est, ubi fornicante dimissa altera ducitur. Nam simili locutione usus etiam Apostolus Jacobus ait: *Scienti igitur bonum facere, et non facienti, peccatum est illi* (Jacobi iv. 17). Numquid ideo non peccatum est illi etiam qui nescit bonum facere, et ideo non facit? Utique peccatum est; sed hoc gravius, si etiam sciat et non faciat: nec illud ideo nullum, quia minus. Ut ergo eodem modo utrumque dicamus: sicut quicumque dimiserit uxorem, excepta causa fornicationis, et aliam duxerit, moechatur; ita quicumque scit bonum facere, et non facit, peccat. Sed quemadmodum hic recte dici non potest, Ergo si nescit, non peccat; sunt enim etiam peccata ignorantium, quamvis minora quam scientium: ita nec illic recte dici potest, Ergo si causa fornicationis dimiserit, et aliam duxerit, non moechatur; est enim moechatio eorum etiam, qui alias ducunt, relictis propter fornicationem prioribus; sed utique minor quam eorum qui non propter fornicationem dimittunt, et alteras ducunt. Potest quippe, sicut dic-

[¹] MSS. *si et ille moechatus est.*

[²] In MSS. *commendare.*

tum est, *Scienti bonum facere, et non facienti, peccatum est illi*; eodem modo et illud dici, Dimittenti uxorem sine causa fornicationis et aliam ducenti, moechatio est illi. Quemadmodum igitur si dixerimus, Quicumque mulierem a marito praeter causam fornicationis dimissam duxerit, moechatur, procul dubio verum dicimus; nec tamen ideo illum qui propter causam fornicationis dimissam duxerit, ab hoc crimine absolvimus, sed utrosque moechos esse minime dubitamus: ita eum qui praeter causam fornicationis uxorem dimiserit et aliam duxerit, moechum pronuntiamus; nec ideo tamen eum qui propter causam fornicationis dimiserit, et alteram duxerit, ab hujus peccati labe defendimus. Ambos enim, licet alterum altero gravius, moechos tamen esse cognoscimus. Neque enim quisquam ita est absurdus, ut moechum neget esse qui duxerit eam quam maritus propter causam fornicationis abiecit, cum moechum dicat eum qui duxerit eam quae praeter causam fornicationis abjecta est: sic ergo isti ambo sunt moechi. Unde cum dicimus, Quicumque mulierem praeter causam fornicationis a viro dimissam duxerit, moechatur; de uno quidem ipsorum dicimus, nec tamen ideo moechari negamus eum qui eam duxerit, quam propter causam fornicationis maritus dimiserit: ita cum ambo sint moechi, et ille scilicet qui dimiserit uxorem suam praeter causam fornicationis et aliam duxerit, et ille qui propter causam fornicationis uxore dimissa se alteri copulaverit; profecto quando de uno eorum legimus, non ita intelligere debemus, quasi ex hoc alter moechus negatus sit, quod alter expressus sit.

10. Sed si hoc evangelista Matthaeus, quia expressa una specie alteram tacuit, facit ad intelligendum difficile; numquid non alii generaliter idipsum ita complexi sunt, ut de utroque posset intelligi? Nam secundum Marcum sic scriptum est: *Quicumque dimiserit uxorem suam, et alteram duxerit, adulterium committit super eam; et si uxor dimiserit virum suum, et alii nupserit, moechatur* (Marc. x. 11 et 12). Secundum Lucam sic: *Omnis qui dimittit uxorem suam, et alteram ducit, moechatur; et qui dimissam a viro ducit, moechatur* (Luc. xvi. 18). Qui ergo nos sumus, ut dicamus, Est qui moechatur, uxore sua dimissa alteram ducens, et est qui hoc faciens non moechatur, cum Evangelium dicat omnem moechari qui hoc facit? Proinde si quicumque hoc fecerit, id est, omnis qui hoc fecerit, ut uxore sua dimissa alteram ducat, moechatur; sine dubitatione ibi sunt ambo, et qui praeter causam fornicationis, et qui propter causam fornicationis dimittit uxorem. Hoc est enim, *Quicumque dimiserit*: hoc est, *Omnis qui dimittit*.

CAPUT X.—11. *Matthaei locus tractatus in libris quos legit Pollentius, quomodo habeat.* Non autem (sicut nescio quare tibi visum est), cum Evangelii secundum Matthaeum verba proferrem, praetermisi quod scriptum est, *et aliam duxerit*; et sic dixi, *moechatur*: sed ea verba posui quae in sermone illo prolixo leguntur, quem Dominus habuit in monte. Hunc enim tractandum susceperam, quae verba illic ita leguntur ut posui, id est, *Quicumque dimiserit uxorem suam, excepta causa fornicationis, facit eam moechari*; *et qui solutam a viro duxerit, moechatur*. Ubi etsi nonnulla exemplaria verbis diversis eundem sensum habent interpretatum, non tamen ab eo quod intelligitur discrepant. Alia quippe habent, *Quicumque dimiserit*: alia, *Omnis qui dimiserit*. Itemque alia, *excepta causa fornicationis*: alia, *praeter causam fornicationis*: alia, *nisi ob causam fornicationis*. Item alia, *qui solutam a viro duxerit, moechatur*: alia, *qui dimissam a viro duxerit, moechatur*. Ubi puto quod videas nihil interesse ad unam eandemque sententiam. Quamvis illud ultimum, id est, *qui dimissam a viro duxerit, moechatur*; in eo sermone quem Dominus fecit in monte, nonnulli codices et graeci et latini non habeant. Credo propterea, quia et ibi explicatus hic sensus putari potuit, in eo quod superius dictum est, *facit eam moechari*. Quomodo enim dimissa fit moecha, nisi fiat qui eam duxerit moechus?

CAPUT XI.—12. *Alius Matthaei locus subobscurus, sed ab evangelistis aliis explanatus.* Verba vero quae ipse posuisti, unde tibi visum est non moechari eum qui propter causam fornicationis uxorem dimiserit et aliam duxerit, obscure quidem posita sunt. Unde non miror in eis intelligendis laborare lectorem: sed non sunt in eo sermone Domini, qui tunc a me tractabatur, quando illa conscripsi, quae cum legeres te moverunt. Alibi quippe idem Matthaeus ea Dominum dixisse narravit, non cum illum prolixum faceret in monte sermonem, sed cum interrogatus esset a Phariseis utrum liceret ex quacumque causa dimittere uxorem. Sec quod minus intelligitur apud Matthaeum, apud alios evangelistas intelligi potest. Quapropter cum legerimus in Evangelio secundum Matthaeum, *Quicumque dimiserit uxorem nisi ob fornicationem*, aut quod magis in graeco legitur, *praeter causam fornicationis, et aliam duxerit, moechatur*: non debemus continuo putare illum non moechari, qui propter causam fornicationis dimiserit, et aliam duxerit; sed adhuc ambigere, donec Evangelium secundum alios evangelistas a quibus hoc narratum est, consulamus. Quid si enim secundum Matthaeum, non quidem quod ad hanc rem pertinet dictum est totum, sed ita pars

dicta est, ut intelligeretur a parte totum, quod tanquam explanantes Marcus et Lucas, ut clareret plena sententia, totum dicere maluerunt? Cum itaque primum non dubitantes verum esse quod apud Matthaeum legitur, *Quicumque dimiserit uxorem suam propter causam fornicationis, et aliam duxerit, moechatur*; quaesierimus utrum tantum iste moechetur ducendo alteram uxorem, qui praeter causam fornicationis priorem dimiserit, an omnis qui dimissa uxore alteram duxerit, ut ibi sit etiam ille qui fornicantem dimiserit: nonne secundum Marcum respondebitur nobis, Quid quaeritis utrum ille sit moechus, et ille non sit? *Quicumque dimiserit uxorem suam, et aliam duxerit, adulterium committit*. Nonne etiam secundum Lucam dicetur nobis, Quid ambigitis utrum ille qui propter causam fornicationis uxorem dimiserit, et aliam duxerit, non moechetur? *Omnis qui dimittit uxorem suam, et ducit alteram, moechatur*. Ac per hoc, quoniam fas non est ut Evangelistas, quamvis diversis verbis de una re loquentes, ab uno sensu eademque sententia dissentire dicamus; restat ut Matthaeum intelligamus a parte totum significare voluisse, eandem tamen tenuisse sententiam, ut dimittens uxorem et alteram ducens, non quidam moechetur, id est, qui praeter fornicationem dimiserit, quidam vero non moechetur, id est, qui propter fornicationem dimiserit, sed omnis qui dimittit uxorem suam, et ducit alteram, moechari minime dubitetur.

CAPUT XII.—13. *Mulier ob fornicationem dimissa non cessat esse uxor ejus qui dimisit*. Nam et illud quod etiam secundum Lucam sequitur, *Qui dimissam a viro ducit, moechatur*, quomodo est verum? Quomodo moechatur, nisi quia illa quam duxit, eo vivente a quo dimissa est, adhuc uxor aliena est? Si enim jam suae, non alienae miscetur uxori, utique non moechatur: moechatur autem; aliena est ergo cui miscetur. Porro si aliena est, hoc est, ejus a quo dimissa est; etiamsi propter fornicationis causam dimissa est, nondum dimittentis uxor esse cessavit. Si autem illius esse cessavit, jam hujus est cui alteri nupsit: et si hujus est, non moechus judicandus est, sed maritus. Sed quia non eum maritum dicit Scriptura, sed moechum; adhuc illa illius est, a quo etiam causa fornicationis abjecta est. Et ideo quaecumque etiam ipse illa dimissa ducit uxorem, quia cum alieno marito concumbit, adultera est. Unde autem fieri potest ut adulter etiam ipse non sit, cum constet adulterare quam duxit?

LIBER SECUNDUS.

CAPUT PRIMUM.—1. *Hujus libri occasio.* Ad ea quae mihi scripseras, frater religiose Pollenti, jam rescripseram non parvum volumen, de iis qui viventibus conjugibus suis aliis copulantur. Quod cum innotuisset Dilectioni tuae, addidisti aliqua ad libellum tuum, etiam his me respondere desiderans: sed cum facere disponerem, addendo et ego ad meum, ita ut unus liber esset etiam responsionis meae, repente illud editum est quod absolveram prius, flagitantibus fratribus, et nescientibus¹ quod adhuc aliquid esset addendum. Hinc factum est ut altero seorsum opusculo, ad ea quae addidisti, respondere compellerer. Non autem quae addidisti, adjuncta sunt fini opusculi tui; sed visum est, ejus interjecta sunt corpori.

CAPUT II.—2. *Pollentii sententia, nubere alteri vetitum esse conjugī, si a non fornicante, non autem si a fornicante discesserit. Mortuum in loco Pauli intelligendum etiam fornicantem sentit.* Horum primum illud est, cui quidem arbitror me respondere debere, quod in his Apostoli verbis, ubi ait, *Caeteris autem ego dico, non Dominus, mulierem a viro non discedere; quod si discesserit, manere innuptam, aut viro suo reconciliari*, non putas ita dictum esse, *si discesserit*, ut a viro fornicante discessisse intelligatur, qua sola causa discedere licitum est; sed potius existimas a pudico, et ideo jussam manere innuptam, ut posset ei reconciliari, si continere ille noluisse, ne virum ad fornicandum, id est, ad aliam se vivente ducendam, ipsa non reconciliata compelleret. Caeterum si a viro fornicante discesserit, putas ei non praecipi ut innupta permaneat: sed hoc eam facere, si continens esse voluerit; non ut praecepti violatrix inveniat esse, si nupserit. Quae tibi videtur forma et a viro esse servanda, ut uxorem non dimittat excepta causa fornicationis; si autem dimiserit, maneat sine conjugio, ut pudicae reconciliari possit uxori, nisi forte continentiam illa delegerit; ne uxoris castae reconciliationem refugiens, ipse illam cogat moechari, si sese non continens vivente illo nupserit alteri: si autem fuerit ab uxore fornicante disjunctus, jam eum nullo praecepto ut se contineat detineri, nec omnino moechari, si viva illa alteram duxerit: quoniam id quod ait idem apostolus, *Mulier alligata est, quamdiu vir ejus vivit; quod si mortuus fuerit vir ejus, liberata est; cui vult nubat* (1 Cor. vii. 10,

[¹] Editi, *flagitantibus fratribus nostris et nescientibus*. At MSS. vocem, *nostris*, collocant post *et nescientibus*; ut in his quidem domesticos et convictores, in *flagitantibus fratribus* vero extraneos intelligamus.

11, 39); sic intelligendum existimas, ut si vir fuerit fornicatus, pro mortuo deputetur, et uxor pro mortua; et ideo liceat cuilibet illorum, tanquam post mortem, ita post fornicationem conjugis alteri copulari.

CAPUT III.—3. *Refellitur Pollentius.* Quibus tuis sensibus consideratis, abs te quaero, utrum quicumque duxerit mulierem quae viro alligata esse destiterit adulter habendus sit? Quod tibi existimo non videri. Ideo enim mulier *vivente viro vocabitur adultera, si fuerit cum alio viro*; quoniam *alligata est, quamdiu vir ejus vivit*. Hoc autem vinculum si ei cum viro vivente non esset, sine ullo adulterii crimine alteri nuberet. Proinde si alligata est quamdiu vir ejus vivit, nullo modo nisi viro mortuo soluta dicenda est ab hoc vinculo. Porro si morte cujuslibet eorum inter maritum et uxorem hoc vinculum solvitur, et pro morte habenda est, sicut dicis, etiam fornicatio, procul dubio erit ab hoc et mulier soluta, quando fuerit fornicata. Neque enim dici poterit haec alligata viro, quando ab illa fuerit vir solutus. Ac per hoc posteaquam fornicando alligata viro esse destiterit, quisquis eam duxerit, adulter non erit.

CAPUT IV.—*Fornicationem pro morte conjugale vinculum solvente deputare, quam absurdum.* Et vide quam sit absurdum, ut ideo non sit adulter, quia duxit adulteram. Imo vero, quod est monstruosius, nec ipsa mulier erit adultera: quoniam non erit posteriori viro uxor aliena, sed sua. Soluta enim per adulterium priore conjugali vinculo, cuicumque jam nupserit conjugem non habenti, non adultera cum adultero, sed uxor erit potius cum marito. Quomodo ergo erit verum, *Mulier alligata est, quamdiu vir ejus vivit*? Ecce vir ejus vivit, quia nec de corpore excessit, nec fornicatus est, quod pro morte vis deputari; et tamen ei mulier alligata jam non est. Nonne attendis quam sit hoc contra Apostolum dicentem, *Mulier alligata est, quamdiu vir ejus vivit*? An forte dicturus es: Vivit quidem, sed vir ejus jam non est: quoniam tunc esse destitit, quando illa per adulterium conjugale vinculum solvit? Quomodo igitur *vivente viro vocabitur adultera, si fuerit cum alio viro*; quandoquidem vir ejus ille jam non est, conjugali vinculo per mulieris adulterium jam soluto? Quo enim vivente viro, nisi suo, vocabitur adultera, si fuerit cum alio viro? At si vir ejus esse ille jam destitit; non utique vivente viro vocabitur adultera, si fuerit cum alio viro; sed nullum habens virum nubendo erit cum suo viro. Hoc qui sentit, nonne cernis quam contra Apostolum sentiat? Quod quidem non ipse sentis, sed hoc sequitur illa quae sentis. Muta ergo antecedentia, si vis cavere sequentia; et noli dicere, mortuum virum vel mortuam uxorem hoc loco debere intelligi

etiam fornicantem. Quamobrem secundum doctrinam sanam *Mulier alligata est, quamdiu vir ejus vivit*; id est, nondum e corpore abscessit. *Mulier enim sub viro, vivo marito, juncta est legi*; hoc est, in corpore constituto. *Si autem mortuus fuerit*, hoc est, in corpore exierit, *evacuata est a lege viri*. *Igitur vivente viro, vocabitur adultera, si fuerit cum alio viro*. *Si autem mortuus fuerit vir ejus, liberata est a lege*,¹ *ut non sit adultera, si fuerit cum alio viro*. (Rom. vii. 2, 3.) Haec verba Apostoli toties repetita, toties inculcata, vera sunt, viva sunt, sana sunt, plena sunt. Nullius viri posterioris mulier uxor esse incipit, nisi prioris esse desiverit. Esse autem desinet uxor prioris, si moriatur vir ejus; non si fornicetur. Licite itaque dimittitur conjux ob causam fornicationis; sed manet vinculum prioris, propter quod fit reus adulterii, qui dimissam duxerit etiam ob causam fornicationis.

CAPUT V.—*Conjugii vinculum morte resolvi, non autem fornicatione et separatione conjugum*. Sicut enim manente in se Sacramento regenerationis, excommunicatur cujusquam reus criminis, nec illo Sacramento caret, etiamsi nunquam reconcilietur Deo: ita manente in se vinculo foederis conjugalis, uxor dimittitur ob causam fornicationis, nec carebit illo vinculo etiamsi nunquam reconcilietur viro; carebit autem, si mortuus fuerit vir ejus. Reus vero excommunicatus ideo nunquam carebit regenerationis Sacramento, etiam non reconciliatus, quoniam nunquam moritur Deus. Remanet itaque ut, si sapere secundum Apostolum volumus, non dicamus virum adulterum pro mortuo deputandum, et ideo licere uxori ejus alteri nubere. Quamvis enim sit mors adulterium, non corporis, sed quod pejus est, animae: non tamen et de ista² morte loquebatur Apostolus, cum dicebat, *Quod si mortuus fuerit vir ejus, cui vult nubat*; sed de illa sola qua de corpore exitur. Quoniam si per conjugis adulterium conjugale solvitur vinculum sequitur illa perversitas, quam cavendam esse monstravi, ut et mulier per impudicitiam solvatur hoc vinculo: quae si solvitur, libera erit a lege viri; et ideo, quod insipientissime dicitur, non erit adultera si fuerit cum alio viro, quia per adulterium liberata est a priore viro. Quod si ita est a veritate devium, ut nullus id, non dico christianus, sed humanus sensus admittat; profecto *mulier alligata est, quamdiu vir ejus vivit*: quod ut apertius dicam, quamdiu vir ejus in corpore est. Pari ergo forma et vir alligatus est, quamdiu mulier ejus in corpore est. Unde si vult

[¹] Editi, *liberata est a lege viri*, vox, *viri*, hoc loco non repetitur in MSS.

[²] Sic codices. At editi, *non tamen de ista*.

dimittere adulteram, non ducat alteram, ne quod in illa culpat, ipse committat. Similiter et mulier, si dimittit adulterum, non sibi copulet alterum: alligata est enim, quamdiu vir ejus vivit; nec a lege viri nisi mortui liberatur, ut non sit adultera, si fuerit cum alio viro.

CAPUT VI.—5. *Reconciliatio post adulterium cum conjugē resipiscente quam conveniens christiano.* Quod autem tibi durum videtur, ut post adulterium reconcilietur conjugi conjux; si fides adsit, non erit durum. Cur enim adhuc deputamus adulteros, quos vel Baptismate ablutos, vel poenitentia credimus esse sanatos? Haec crimina in vetere Dei lege nullis sacrificiis mundabantur, quae Novi Testamenti sanguine sine dubitatione mundantur¹; et ideo tunc omni modo prohibitum est ab alio contaminatam viro recipere uxorem; quamvis David Saülis filiam, quam pater ejusdem mulieris ab eo separatam dederat alteri, tanquam Novi Testamenti praefigurator sine cunctatione receperit (2 Reg. iii. 14): nunc autem posteaquam Christus ait adulterae, *Nec ego te damnabo; vade, deinceps noli peccare*; quis non intelligat debere ignoscere maritum, quod videt ignovisse Dominum amborum, nec jam se debere adulteram dicere, cujus poenitentis crimen divina credit miseratione deletum?

CAPUT VII.—6. *Mariti saevientes in uxores adulteras, cum sint et ipsi adulteri.* Sed hoc videlicet infidelium sensus exhorret, ita ut nonnulli modicae fidei vel potius inimici verae fidei, credo metuentes peccandi impunitatem dari mulieribus suis, illud quod de adulterae indulgentia Dominus fecit, auferrent de codicibus suis: quasi permissionem peccandi tribuerit qui dixit, *Jam deinceps noli peccare*; aut ideo non debuerit mulier a medico Deo illius peccati remissione sanari, ne offenderentur insani. Neque enim quibus illud factum Domini displicet, ipsi pudici sunt et eos severos castitas facit: sed potius ex illo sunt hominum numero, quibus Dominus ait, *Qui sine peccato est vestrum, prior in eam lapidem jaciat*. Nisi quod illi conscientia territi recesserunt, et tentare Christum atque adulteram persequi destiterunt (Joan. viii. 7–11): isti autem et aegroti medicum reprehendunt, et in adulteras adulteri saeviunt: quibus si diceretur, non quod illi audierunt, *Qui sine peccato est*; quis enim sine peccato? sed, *Qui sine isto peccato est, prior in illam lapidem mittat*; tum vero forsitan cogitarent, qui indignabantur quod adulturam non occiderent, quanta illis Dei misericordia parceretur, ut adulteri viverent.

[¹] Sic editio Er. nostris ibi plerisque ac melioribus MSS. consentiens. At Lov., *quae Novi Testamenti sanguine Christi sine dubitatione mundantur*.

CAPUT VIII.—7. *Viri adulteri gravius puniendi quam adulterae uores. Lex Antonini, viros impudicos aequè ac mulieres damnari volentis. Virorum impudicitia peior. Sed cum haec eis dicimus, non solum nihil volunt detrudere severitati; sed irascuntur insuper veritati, et loquuntur atque respondent: Sed nos viri sumus; an vero sexus nostri dignitas hanc sustinebit injuriam, ut cum aliis feminis praeter uxores nostras si quid admittimus, in luendis poenis mulieribus comparemur? Quasi non propterea magis debeant illicitas concupiscentias viriliter frenare, quia viri sunt? quasi non propterea magis debeant mulieribus suis ad virtutis hujus exemplum se praebere, quia viri sunt? quasi non propterea minus debeant a libidine superari, quia viri sunt? quasi non propterea minus debeant lascivienti carni servire, quia viri sunt? Et tamen indignantur, si audiant adulteros viros pendere similes adulteris feminis poenas; cum tanto gravius eos puniri oportuerit, quanto magis ad eos pertinet et virtute vincere, et exemplo regere feminas. Christianis equidem loquor, qui fide-liter audiunt, *Caput mulieris vir* (Ephes. v. 33): ubi se agnoscunt duces, illas autem comites esse debere; et ideo cavendum viro illac ire vivendo, qua timet ne uxor sequatur imitando. Sed isti quibus displicet ut inter virum et uxorem par pudicitiae forma servetur, et potius eligunt, maximeque in hac causa, mundi legibus subditi esse quam Christi, quoniam jura forensia non eisdem quibus feminas pudicitiae nexibus viros videntur obstringere; legant quid imperator Antoninus,¹ non utique christianus, de hac re constituerit, ubi maritus uxorem de adulterii crimine accusare non sinitur, cui moribus suis non prae-buit castitatis exemplum, ita ut ambo damnentur, si ambo pariter impudicos conflictus ipse convicerit. Nam supra dicti imperatoris haec verba sunt, quae apud Gregorianum leguntur: *Sane, inquit, meae litterae nulla parte causae praejudicabunt. Neque enim si penes te culpa fuit ut matrimonium solveretur, et secundum legem Juliam Eupasia uxor tua nuberet, propter hoc rescriptum meum adulterii damnata erit, nisi constet esse commissum. Habebunt autem ante oculos hoc inquirere, an cum tu pudice viveres, illi quoque bonos mores colendi auctor fuisti. Periniquum enim mihi videtur esse ut pudicitiam vir ab uxore exigat, quam ipse non exhibet: quae res potest et virum damnare, non ob compensationem mutui criminis rem inter utrumque componere, vel causam facti tollere.* Si haec observanda sunt propter decus terrenae civitatis; quanto castiores quaerit coelestis patria et societas Angelorum? Quae cum*

[¹] Editio Erasmiana, *Antonius*; male et refragantibus omnibus MSS.

ita sint, numquid ideo minor est, ac non potius major et peior virorum impudicitia, quia inest illis superba et licentiosa jactantia? Non igitur exhorreant viri quod adulterae Christus ignovit; sed potius cognoscant etiam periculum suum, et simili morbo laborantes ad eundem Salvatorem supplici pietate confugiant; et quod in illa factum legunt, etiam sibi necessarium esse fateantur, adulteriorum suorum medicinam suscipiant, adulterare jam desinant, laudent in se Dei patientiam, agant poenitentiam, sumant indulgentiam, mutent de poena feminarum et de sua impunitate sententiam.

CAPUT IX.—8. *Nolens reconciliari adulterae uxori non potest alteri nubere.* Quibus consideratis atque tractatis, si communis conditio, commune malum, commune periculum, commune vulnus, communis salus fideliter et humiliter cogitur; non erit turpis, neque difficilis, etiam post perpetrata atque purgata adulteria, reconciliatio conjugum, ubi per claves regni coelorum non dubitatur fieri remissio peccatorum: non ut post viri divortium adultera revocetur, sed ut post Christi consortium adultera non vocetur. Verum ecce non fiat, nemo compellit, quia forte lex aliqua hujus saeculi vetat secundum terrenae civitatis modum, ubi cogitata non est abolitio criminum per sanguinem sanctum. Suscipiatur ergo continentia, quam nulla lex prohibet; in alia non eatur adulteria. Et quid ad nos, si nec saltem divina miseratione mundata marito reconcilietur¹ adultera, dum tamen non reconciliatis adulteris, non alia fiant quasi connubia, quae convincuntur esse adulteria? *Mulier enim alligata est, quamdiu vir ejus vivit.* (1 Cor. vii. 39.) Ergo consequenter et vir alligatus est, quamdiu mulier ejus vivit. Haec alligatio facit ut aliis conjungi sine adulterina copulatione non possint. Unde necesse est ex duobus conjugibus quatuor adulteros fieri, si et illa alteri nupserit, et ille alteram duxerit.² Quamvis enim sceleratius moechetur, qui non causa fornicationis uxore dimissa alteram ducit: quod genus adulterii commemoravit Matthaeus: tamen non solum ipse moechatur, sed, sicuti est apud Marcum, *Quicumque dimiserit uxorem suam et aliam duxerit, adulterium committit super eam; et si uxor dimiserit virum et alii nupserit, moechatur* (Marc. x. 12 et 13); et sicuti est apud Lucam, *Omnis qui dimittit uxorem suam, et ducit alteram, moechatur; et qui dimissam a viro duxerit, moechatur.* (Luc. xvi. 18.) De quibus testimoniis jam satis in libro superiore disserui.

[¹] Editi, *reconcilietur a Deo.* At MSS. non addunt, *a Deo.*

[²] Sola edito Lov. *si et illa adultero nupserit, et ille adulteram duxerit.*

CAPUT X.—9. *Incontinentium querelas adversus legem Christi retardis alteri nubere dimissa adultera, frustra objectari. Si incontinentium querelae admittantur, permittenda adulteria in multis casibus. Justior videbitur querela mulieris praeter fornicationem dimissae et nubere alteri cupientis. Sed respondes mihi: “Continenter vivere paucorum est; et ideo qui fornicantes conjuges dimiserunt, quoniam non possunt reconciliari, tantum se vident periclitari, ut legem Christi non humanam, sed feralem, pronuntient.”* O frater, quantum ad incontinentes pertinet, multas querelas habere possunt, quibus, ut dicis, legem Christi feralem pronuntient, non humanam. Et tamen non propter illos Evangelium Christi pervertere, vel mutare debemus. Te quippe sola eorum querela permoveret, qui conjuges causa fornicationis intercedente dimittunt, si alias ducere non sinantur: quoniam continere paucorum est, atque ad id debent laude adhortari, non lege compelli. Itaque si dimissa adultera non ducitur altera, justam querelam, sicut putas, habebit hominum incontinentia. Sed attende quam plura sunt, ubi si querelas incontinentium velimus admittere, necesse nobis erit adulteria facienda permittere.¹ Quid si enim aliquo diuturno et insanabili morbo corporis teneatur conjux, quo concubitus impeditur? quid, si captivitas, vel vis aliqua separet, ita ut sciat vivere maritus uxorem, cujus sibi copia denegatur? censesne admittenda incontinentium murmura, et permittenda adulteria? Quid in hoc ipso unde interrogatus est Dominus, responditque fieri non debere, sed ad duritiam cordis illorum Moysen permisisse dari libellum repudii, et quaecumque causa dimittere conjugem? nonne lex Christi incontinentibus displicet, qui uxores litigiosas, injuriosas, imperiosas, fastidiosas, et ad reddendum debitum conjugale difficillimas, repudio interposito abjicere volunt, et alteras ducere? Jam ergo, quia istorum incontinentia legem Christi horruit, ad eorum lex Christi arbitrium commutanda est?

10. Jam porro si maritum relinquat uxor, vel maritus uxorem, non causa fornicationis, sed potius continentiae, sitque incontinens cui repudium propter hoc datur; quaero utrum non erit adulter vel adultera, si alteri copuletur? Si, Non erit, dicitur; Domino contradicatur, cujus haec verba sunt: *Dictum est autem, Quicumque dimiserit uxorem suam, det illi libellum repudii. Ego autem dico vobis quia omnis qui dimiserit uxorem suam, excepta causa fornicationis, facit eam moechari; et qui dimissam duxerit, adulterat.* (Matth. v. 31 et 32.) Ecce dimissa est; non dimisit; et quia con-

[¹] Sola editio Lov. *adulteria fienda permittere.*

tinere paucorum est continentiae cessit et nupsit; et tamen adulter adulteram duxit. Ambo rei, ambo damnandi sunt; et quae nupsit viro marito, et qui duxit eam cujus vivit maritus. Numquid hic legem Christi dicimus inhumanam, qua constituitur rea tanti criminis atque punitur, quam vir nulla ejus praecedente fornicatione dimisit, et quia paucorum est continere, dimittendo compulit nubere? Cur non hic dicimus habendum esse pro mutuo, qui male dimittendo prior conjugale vinculum rupit? Nam qua ratione dicturus es eum rupisse vinculum conjugale, qui licet sit moechus, non dimisit uxorem; et eum non rupisse qui etiam castam dimisit uxorem? Ego autem dico in utroque manere hoc vinculum, quo mulier alligata est, quamdiu vir ejus vivit, sive continens, sive moechus: et ideo moechari eam quae dimissa nupserit, et moechari eum qui dimissam duxerit, sive a moechno, sive a continente dimissa sit: quoniam *mulier alligata est, quamdiu vir ejus vivit*. Sed nunc de querelis incontinentium disputamus. Quid enim videtur justius hujus mulieris querela, quae dicit: Dimissa sum, non dimisi; et quoniam continere paucorum est, non me continui, ne fornicarer nupsi; et dicor moechata, quia nupsi? Numquid propter hujus quasi justam querelam, legem censebimus mutandam esse divinam, ut istam non judicemus adulteram? Absit. Sed respondebis non eam debuisse dimitti, quia fornicationis nulla causa praecesserat. Verum dicis: nam peccatum mariti ejus Dominus expressit, ubi ait, *Qui dimiserit uxorem suam, excepta causa fornicationis, facit eam moechari*. Sed numquid ista ideo nubendo postea non peccavit, quia prius dimittendo ille peccavit? Quid ergo ei prodest, quod de lege Christi mulier incontinens queritur, nisi ut murmurans puniatur?

CAPUT XI.—11. *Objectio alia Pollentii ut saltem filiorum gignendorum causa licet alteram ducere dimissa adultera*. Jam nunc etiam illa videamus quae alio loco interponens addidisti, neque ad ea respondere voluisti: ubi te movet, et miseraris hominem qui cubare cum adultera, etiamsi non incontinentia, certe filiorum procreandorum necessitate compellitur, si non ei licet sic eam dimittere, ut ea vivente alteram ducat. Unde recte movereris, si adulterium non esset, quamvis adultera viva uxore, alteram ducere. Si autem adulterium est, ut ea quae sunt disputata docuerunt, quid obtenditur procreandorum causa filiorum? Non enim propterea flagitiorum est permittenda licentia: aut vero¹ tam cavendum est sine posteris mori, quam eligendum in posterum vivere? quod non sinentur adulteri,

[¹] Lov. *aut viro*. Caeteri Codices, *aut vero*.

quos necesse est post primam mortem secundae mortis aeternitate damnari. Nam procreandorum filiorum ista causatio, etiam non adulteras, sed castissimas feminas, si forte sint steriles, cogit dimitti, et alteras duci: quod tibi existimo non placere.

12. Quapropter si causa incontinentiae non sunt excusanda adulteria, quanto minus excusantur procreandorum causa filiorum?

CAPUT XII.—*Nuptias hoc tempore filiorum causa iis tantum eligendus esse, qui se continere non possunt.* Illi quippe infirmitati, hoc est, incontinentiae voluit Apostolus subveniri, honestate nuptiarum. Non enim ait, Si filios non habet, nubat: sed, *Si se non continet, nubat.* (1 Cor. vii. 9.) Filiorum quidem propagine compensatur quod incontinentiae nubendo ceditur. Nam utique incontinentia vitium est, conjugium autem non est vitium; et ideo fit per hoc bonum, ut illud veniale sit malum. Cum sint ergo nuptiae causa generandi institutae, ea causa fiebant a Patribus, qui tantum officio generandi feminis, sed non illicite, miscebantur. Erat enim tunc quaedam propagandi necessitas, quae nunc non est: quoniam *tempus amplectendi*, sicut scriptum est, quod utique tunc fuit; *et tempus continendi ab amplexu* (Eccles. iii. 5), quod nunc est. De quo tempore Apostolus loquens ait: *De caetero, fratres, tempus breve est: reliquum est ut et qui habent uxores, tanquam non habentes sint.* (1 Cor. vii. 29.) Unde nunc rectissime dicitur, *Qui potest capere, capiat* (Matth. xix. 12): qui autem se non continet, nubat. Tunc ergo etiam continentia propter propagationem filiorum in nuptias descendebat officio¹: nunc autem vinculum nuptiale incontinentiae subvenit vitio; ut ab eis qui se non continent, non per turpitudinem stuprorum, sed per honestatem conjugiorum, fiat propagatio filiorum. Cur ergo non dixit Apostolus, si filios non habet, nubat? Quia scilicet hoc tempore continendi ab amplexu, non est necesse filios propagare. Et quare dixit, *Si se non continet, nubat?* Utique propterea, ne per incontinentiam² cogatur adulterare. Si ergo se continet, nec nubat, nec generet. Si autem se non continet, licite nubat, ne turpiter generet, aut turpius concumbendo non generet. Quanquam hoc quod ultimum dixi, nonnulli faciant etiam licite conjugati. Illicite namque et turpiter etiam cum legitima uxore concumbitur, ubi prolis conceptio devitatur. Quod faciebat Onan filius Judae, et occidit illum propter hoc Deus (Gen. xxxviii. 8–10.) Propagatio itaque filiorum, ipsa est prima et naturalis et legitima

[¹] Germanensis MSS. *in nuptiarum descendebat officium.*

[²] Corbeiensis Codex, *ne propter incontinentiam.*

causa nuptiarum: ac per hoc qui propter incontinentiam conjungantur, non sic debent temperare malum suum, ut bonum exterminent nuptiarum, id est, propaginem filiorum. De incontinentibus quippe loquebatur Apostolus, ubi ait: *Volo igitur juniores nubere, filios procreare, matresfamilias esse, nullam occasionem dare adversario maledicti gratia. Jam enim conversae quaedam sunt retro post satanam.* (1 Tim. v. 14 et 15.) Cum itaque dicebat, *Volo juniores nubere*; hoc utique monebat propter ruinam incontinentiae fulciendam. Sed ne forte ab eis sola carnalis concupiscentiae cogitaretur infirmitas, cui tantummodo esset corpore connubii serviendum, nuptiarum autem vel contemneretur vel negligeretur bonum; continuo subjunxit, *filios procreare, matresfamilias esse.* Qui vero eligunt continere, aliquid utique melius eligunt quam est nuptiarum bonum, hoc est, generatio filiorum. Unde si eligitur continentia, ut bono nuptiarum melius aliquid capessatur; quanto potius custodienda est, ut adulterium caveatur? Cum enim dixisset Apostolus, *Quod si se non continet, nubat: Melius est enim, inquit, nubere quam uri.* (1 Cor. vii. 9.) Non dixit, *Melius est moechari quam uri.*

CAPUT XIII.—13. *Nolentes reconciliari conjugibus adulteris, continentiam custodiant.* Non est igitur ad quod exhortemur eos qui reconciliari timent conjugibus adulteris poenitendo sanatis, nisi ad custodiendam continentiam. Quoniam mulier alligata quamdiu sive moechus sive castus vir ejus vivit, moechatur si alteri nupserit; et vir alligatus quamdiu sive moecha sive casta uxor ejus vivit, moechatur si alteram duxerit. Haec namque alligatio quando quidem non solvitur, etiamsi per repudium conjux a casto conjugē¹ separetur; multo minus solvitur, si non separata moechetur. Ac per hoc non eam solvit, nisi mors conjugis, non in adulterium corruentis, sed de corpore exeuntis. Quapropter si recesserit mulier ab adultero viro, et ei reconciliari non vult, maneat innupta; et si dimiserit vir adulteram mulierem, et eam non vult recipere nec post poenitentiam, custodiat continentiam: etsi non ex voluntate eligendi potioris boni, certe ex necessitate vitandi perniciosi mali. Ad hoc exhortarer, etiamsi uxor esset in languore insanabili atque diuturno, etiamsi alicubi esset corpore separata, quo maritus non posset accedere: postremo ad hoc exhortarer, etiamsi mulier volens vivere continenter, quamvis contra disciplinam, quia non ex consensu, tamen pudicum pudica dimitteret. Puto enim christianum neminem reluctari, adulterum esse qui vel diu languente,

[¹] Sic melioris notae MSS. At Lov. *conjux a casta conjugē.* Er. *conjux casto corpore.*

vel diu absente vel continenter vivere cupiente sua uxore, alteri commixtus est feminae. Sic ergo et dimissa adultera, adulter est cum altera; quoniam non ille, aut ille; sed, *Omnis qui dimittit uxorem suam et ducit alteram, moechatur.* (Luc. xvi. 8.) Quapropter si a conjugali vinculo immunis minus appetitur vita sanctorum, exhorreatur poena moechorum; et timore saltem frenetur concupiscentia, si amore non eligitur continentia. Si enim ubi est timor, operetur labor; ubi erat labor, erit et amor. Non enim confidendum est de nostris viribus; sed oratio adjungenda conatibus, ut impleat bonis, qui deterret a malis.

CAPUT XIV.—14. *Objectio alia, hac sententia excludi benignitatem, ut mariti velint puniri adulteras, quibus mortuis ducere alias possint.* Respondeamus etiam ad illud, ubi putas maritos ad puniendas adulteras sine ulla miseratione compelli; cum volunt eas mori, si eis viventibus non licet eis alteras ducere. Quam crudelitatem volens exaggerare dixisti: *Non mihi videtur, amantissime pater, hic divinus esse sensus, ubi benignitas et pietas excluditur.* Ita istud dicis, quasi propterea mariti parcere debeant adulteris feminis, quia licet eis alteras ducere; ut si non licet, non parcant ut liceat. Quinimo propterea debent peccatricibus praebere misericordiam, ut et ipsi pro suis peccatis misericordiam consequantur. Et multo magis hoc eis faciendum est, qui dimissis uxoribus adulteris cupiunt vivere continenter. Tanto quippe debent esse misericordiores, quanto volunt esse sanctiores: ut et ad castitatem in se ipsis servandam divinitus adjuventur, dum castitatem ab uxoribus violatam nec ipsi humanitus ulciscuntur. Et maxime vox illa dominica est eis in memoriam revocanda: *Qui sine peccato est, prior in illam lapidem jaciat.* (Joan. viii. 7.) Non, *Qui sine ipso peccato est*, quoniam loquimur de pudicis viris¹; sed, *Qui sine peccato est*: quod si esse se dixerint, se ipsos seducunt, et veritas in eis non est. (1 Joan. i. 8.) Porro si non se seducunt, et est in eis veritas, non erit in eis cruenta severitas. Scientes enim se non esse sine peccato, dimittunt ut dimittatur eis; nec ab eis benignitas et pietas excluditur². Magis enim haec excluduntur, si peccatis conjugum ab eis impetret veniam licentia libidinis, non cura pietatis; id est, ut propterea parcant quia licet eis alteras ducere, et non potius propterea quia volunt et sibi Dominum parcere.

[¹] Sic melius MSS. At editi, *quomodo loquimur de pudicis viris.*

[²] Lov. *ne ab eis benignitas excludatur.* Caeteri vero codices, *nec ab eis*, etc., et ex his quidam habent *excludantur*; alii cum Am. et Fr. *excluditur.*

15. Quanto itaque melius, et honestius, christiana denique professione dignius, ut parcant adulterarum sanguini uxorum, quod scriptum est eis dicimus, *Dimitte injustitiam proximo tuo, et tunc precanti tibi peccata solventur. Homo homini conservat iram, et a Domino quaerit medelam? Super hominem similem sibi non habet misericordiam, et de peccatis suis deprecatur? Cum ipse caro sit, conservat iracundiam? quis propitiabitur peccatis illius?* (Eccli. xxviii. 25); et de Evangelio, *Dimitte, et dimittetur vobis* (Luc. vi. 37): ut possimus dicere, *Dimitte nobis debita nostra sicut et nos dimittimus debitoribus nostris* (Matth. vi. 12); et de Apostolo, *Nulli malum pro malo reddentes* (Rom. xii. 17): et si qua sunt hujusmodi in Scripturis sanctis, quibus, ad ulciscendum quando humanus animus excitatur, quia christianus est, mitigatur?

CAPUT XV.—*Mariti ad parcendum adulteris uxoribus non licentia libidinis, sed cura pietatis adducantur.* Quanto, inquam, melius ista dicimus, quam ut dicamus, Tantum adulteras istas dimittite, et earum nolite sanguinem quaerere; quidquid doloris ex earum flagitiis habetis, consolabuntur vos aliae quas duxeritis: merito enim velletis istas de viventium numero auferre, si earum vita impedimento esset, quominus alias duceretis; nunc vero, etiam istis viventibus cum liceat alia vobis matrimonia providere, quid eas tantopere vultis occidere? Haec si dicimus, nonne attendis quam nostra suasio longe sit a charactere christiano²; quia et falsum dicimus, eis licere quod non licet, hoc est, istis viventibus ut aliis copulentur; et si propterea illis pepercerint, non parcent propter pietatem, sed propter aliarum nuptiarum liberam potestatem. Postremo quaero abs te, utrum marito christiano liceat vel secundum veterem Dei legem, vel Romanis legibus adulteram occidere³? Si licet, melius est ut ab utroque se temperet, id est, et a licito illa peccante supplicio, et ab illicito illa vivente conjugio. Quod si alterutrum eligere perseverat, satius est ei facere quod licet, ut adultera puniatur, quam id quod non licet, ut ipsa viva ille moechetur. Si autem, quod verius dicitur, non licet homini christiano adulteram conjugem occidere, sed tantum dimittere; quis est tam demens qui ei dicat, Fac quod non licet, ut tibi liceat quod non licet? Cum enim utrumque secundum legem Christi illicitum sit, sive adulteram occidere, sive illa vivente alteram ducere, ab utroque abstinendum est, non illicitum pro illicito faciendum. Si enim facturus est quod non licet, jam faciat adulterium, et non faciat

[¹] Corbiensis Codex, *Charitate Christi*.

[²] Sic omnes MSS. At editi vel *Romanes leges adulteram occidere*.

homicidium ; ut vivente uxore alteram ducat, et non humanum sanguinem fundat. Quod si est utrumque nefarium, non debet alterum pro altero perpetrare, sed utrumque vitare.

CAPUT XVI. — 16. *Objectatur incontinentem, si adulterae uxori suae mortem accusando procurarit, veniam accepturum per Baptismum aut reconciliationem, quae sibi alioquin perpetuo adultero denegarentur. Graviora contra Pollentii opinionem excogitari posse, quam quae ab illo objectantur incommoda.* Hic video quid dici ab incontinentibus possit : quod videlicet qui dimittit et vivere permittit adulteram, si alteram duxerit, quamdiu prior illa vivit, perpetuus adulter est, nec agit poenitentiam fructuosam a flagitio non recedens ; nec si catechumenus est, ad Baptismum admittitur, quoniam ab eo quod impedit non mutatur ; nec reconciliari poenitens potest in eadem nequitia perseverans : si autem accusando adulteram occiderit, hoc peccatum quoniam transactum est, et in eo non permanet, et si a catechumeno factum est, Baptismate abluitur ; et si a baptizato, poenitentia et reconciliatione sanatur. Sed numquid propterea dicturi sumus adulterium non esse adulterium, quod sine dubio committitur, si conjuge adultera vivente altera ducitur ? Sed hoc adulterii genere excepto, nempe non dubitas esse adulterium, si quisquam ducat viventis uxorem a viro suo per libellum repudii sine ulla mulieris fornicatione dimissam. Quid ergo, cum viderit se nec ad Baptismum admitti, si catechumenus, nec utiliter agere poenitentiam, si baptizatus hoc fecit, non corrigendo et relinquendo quod fecit, si cum voluerit et potuerit occidere cujus duxit uxorem, ut hoc scelus vel Baptismate diluatur, vel poenitendo solvatur, atque ita etiam illud adulterium non permaneat, evacuata muliere a lege viri post mortem viri, sed de transacto quod factum est, per poenitentiam satis fiat, vel regeneratione deleatur ; numquid propterea est accusanda lex Christi, tanquam compulerit fieri homicidium, cum sine crimine fornicationis repudiatum ducere, dicit esse adulterium ?

17. Hic enim, si parum quid loquamur attendimus, multo graviora dici possunt quam ipse dixisti. Nam tu dum non vis esse adulteria, si aliae ducantur dimissis adulteris, hoc invenisti : *Quoniam si haec adulteria dicerimus cogentur mariti occidere adulteras, quarum vita impediuntur alteras ducere.* Atque ut hoc exaggerares, dixisti : *Non mihi videtur, amantissime pater, hic divinus esse sensus, ubi benignitas et pietas excluditur.* Si ergo quispiam nolens credere esse adulterium quando a marito sine fornicationis crimine repudiata ab altero ducitur, et hoc contra te inveniat, quia ista ratione suadetur

hominibus homicidia perpetrare, et earum maritos, quas eo modo repudiatas duxerint, vel insidiis quibus potuerint, vel calumniis appetere, vel aliquibus veris criminibus accusare et occidere, ut eis mortuis esse possint conjugia, quae vivis fuerant adulteria; nonne id exaggerando tibi dicturus est: Non mihi videtur, amantissime frater, hic divinus esse sensus, ubi non solum benignitas et pietas excluditur, sed etiam ingens malignitas et impietas excitatur? Quandoquidem multo est levius et tolerabilius, ut adulteras mariti, quam ut maritos adulteri occidant. Placetne tibi, ut propter vanissimam invidiam, dominicae defensionem sententiae deseramus, vel eam insuper accusemus, dicentes non debere adulterium vindicari¹, etiamsi praeter causam fornicationis repudiata a viro alteri conjugetur, ne maritum ejus a quo dimissa est compellatur occidere, dum adulterium in connubium cupit viri prioris morte convertere? Scio hoc tibi non placere, ut propter hanc vanissimam invidiam, lex Christi, cum vera inveniatur et sana, dura et inhumana dicatur. Sic itaque non tibi debet videri ideo negandum esse adulterium, quando uxore adultera vivente altera ducitur, quia potest maritus per hoc cogi adulteram occidere, dum cupit sibi licere illa exstincta alteram ducere, si hoc ea vivente non licet facere. Quid si enim et illud dicant christianae fidei detractores, cogi homines occidere uxores suas insidiarum sceleribus, quas molestas ferre non possunt, sive diuturno languore laborantes et pati concubitum non valentes, sive pauperes, sive steriles, sive deformes, aliarum spe ducendarum, sanarum, opulentarum, fecundarum, pulcherrimarum; quia eas perpeti nolunt, praeter causam fornicationis repudiare non licet et alteras ducere, ne perpetuo devincti adulterio, nec baptizari possint, nec poenitendo sanari? Numquid propterea ne ista homicidiorum scelera perpetrentur, dicturi sumus, non esse adulteria, repudiatis praeter causam fornicationis uxoribus, sibi alteras copulare?

CAPUT XVII.—18. *Incommodum aliud contra Pollentii sententiam.* Jam vero ex hoc quod sapis non esse adulterium, si vir uxorem causa fornicationis abjecerit, et alteram duxerit; nonne arbitraris cavendum, ne discant viri uxores suas, quas propter alias innumerabiles causas ferre non possunt, moechari cogere, ut ab eis vinculo conjugali per fornicationem, sicut putas, soluto, liceat eis alteras ducere; et ex eo quod illas moechari coegerunt, aut Baptismate ablui, aut poenitendo sanari, quoniam illis et gratia et medicina negabitur quamdiu cum adulteris vivent, si prioribus

[¹] Michaelinus Codex, *judicari*.

praeter causam fornicationis repudiatis alteras duxerint? Nisi forte quis dicat, neminem posse uxorem suam moechari facere, si pudica est: et tamen Dominus, *Omnis qui dimiserit, inquit, uxorem suam, praeter causam fornicationis, facit eam moechari.* (Matth. v. 33.) Utique propterea, quia cum esset pudica cum viro, tamen dimissa cogitur per incontinentiam vivo priore alteri copulari, et hoc est moechari. Quod si hoc ista non fecerit, tamen ille quantum in ipso est facere compulit; et hoc ei Deus peccatum, etiamsi illa casta permaneat, imputabit. Sed quis nesciat quam sint rarissimae, quae ita pudice vivant cum viris, ut etiamsi ab eis dimittantur, alios non requirant? Incomparabiliter quippe numerus est amplior feminarum, quae cum pudice adhaereant maritis, tamen si dimissae fuerint a maritis, non differunt nubere. Cum ergo crediderint homines Domino dicenti, *Omnis qui dimiserit uxorem suam, praeter causam fornicationis, facit eam moechari;* si crediderint et tibi dicenti, muliere fornicante licere viro ejus alteram ducere; quisquis voluerit propter alias quaslibet molestias carere uxore cui junctus est, prius eam moechari faciat, sine fornicatione dimittendo, ut tunc ducat alteram, cum fuerit illa moecha nubendo; ac sic a priore peccato quo eam moechari fecit, sive per Baptismum, sive per poenitentiam liberatus, sine suo adulterio sibi habere videatur, quam post prioris adulterium, tanquam hinc soluto matrimonii vinculo alteram duxerit. Quod quidem si fuerit machinatus, et uxorem suam moecham faciet, et ipse quamvis post adulterium conjugis aliam ducendo moechus erit; nihilque illi proderit quod tibi credidit, et non ei potius qui nullo excepto ait, *Omnis qui reliquerit uxorem suam et aliam duxerit, moechatur.* (Luc. xvi. 18.)

CAPUT XVIII.—19. *Continentia serranda aut conjugalit aut excellentior.* Quibus omnibus consideratis atque tractatis restat ut ab eis qui haec fideliter audiunt, dicatur nobis quod Domino dictum est: *Si talis est causa cum uxore, non expedit nubere.* Quibus et nos quid respondeamus, nisi quod ipse respondit? *Non omnes capiunt verbum hoc, sed quibus datum est. Sunt enim eunuchi qui de matris utero sic nati sunt; et sunt eunuchi qui facti sunt ab hominibus; et sunt eunuchi qui se ipsos castraverunt propter regnum coelorum. Qui potest capere capiat.* (Matth. xix. 10–12.) Ergo qui potest capiat, quod non omnes capiunt. Possunt autem capere hi quibus hoc praestat Dei misericordia occulta, sed justa¹. Sed in his omnibus qui se ipsos castraverunt propter regnum coelorum, alii sunt

[¹] *Lox. sed non injusta. MSS. et alii sed justa.*

qui in utroque sexu concubitus nesciunt, alii qui experti et aversi sunt, partim quidem illicite, partim vero licite experti. Porro in his qui licite experti sunt, quidam sunt qui non nisi licite, quidam et illicite et licite. Sunt quippe in eis qui conjugia sua tantum sciunt: sunt autem qui et alias feminas ac stupra quaelibet. Sed qui post concubitus conjugum se ipsos castrant propter regnum coelorum, aut morte amittunt conjuges, aut ex consensu cum eis continentiam profitentur; aut ex necessitate divortiorum, ne vivis conjugibus se aliis copulando adulteria perpetrent, castrant se ipsos propter regnum coelorum, non ut clariores ibi esse possint, sed quod aliter ibi esse non possint: nam qui non ista necessitate se continent, sed boni appetitione melioris, possent ibi esse etiam servata pudicitia conjugali, quamvis in praemiis minoribus, tamen intus. Qui vero propterea se continent, quia prioribus conjugibus vivis timent aliis conjugari, majorem curam debent gerere pro salute, quam gesserunt illi a quibus continentia pro munere delecta est¹ ampliore. Tunc quippe ibi erunt, si adulteri non erunt. Si autem non continent, adulteri erunt; quia viventibus conjugibus pristinis, non conjugibus alteris, sed adulteris adhaerebunt. Et si a regno coelorum aberunt, ubi erunt, nisi ubi salvi non erunt?

CAPUT XIX.—20. *Conjuges divortio separatos a conjugibus hortatur ad continentiam.* Hos igitur alloquor, ut quod facere deberent, si haberent conjuges diuturno languore marcescentes, vel loco sibi inaccessibili absentes, vel animositate illicita continentes; hoc faciant, si habuerint conjuges adulterina iniquatione sordentes, et propter hoc a suo consortio divortiantes²: non alia quaerant conjugia, quia non erunt conjugia, sed adulteria. Cum enim par forma sit in hoc vinculo viri et uxoris, sicut uxor *vivente viro vocabitur adultera, si fuerit cum alio viro* (Rom. vii. 3); ita et vir *vivente uxore vocabitur adulter, si fuerit cum alia muliere.* Etsi enim gravius qui praeter causam fornicationis, *omnis tamen qui dimiserit uxorem suam, et aliam duxerit, moechatur.* Non eos terreat sarcina continentiae: levis erit, si Christi erit; Christi erit, si fides aderit, quae impetrat a jubente quod jusserit. Non eos frangat, quod videtur eorum continentia necessitatis esse, non voluntatis: quia et illi qui eam voluntate delegerunt, fecerunt eam esse necessitatis; quoniam jam sine damnatione ab illa deviare non possunt: et qui in eam necessitate contrusi sunt, faciunt eam esse voluntatis, si non de se ipsis, sed de illo a quo est bonum omne confidunt. Illi ad eam conscenderunt

[¹] Er. et MSS. *dilecta est.*

[²] In MSS. *divortientes.*

causa majoris gloriae, ut aliquid amplius invenirent; isti ad eam confugerunt cura salutis novissimae, ne perirent: utrique permaneant, utrique in quod pervenerunt ambulent usque in finem, ferveant studiis, supplicent votis qua et illis salus cogitanda est, ut ab eo quod voluntas arripuit cadere timeant; et istis gloria desperanda non est, si in eo quod necessitas intulit, persistere deligant³. Fieri enim potest ut Deo terrente et hortante, convertente et implente, humanus in melius mutetur affectus; atque ita voveant sine conjugiiis et sine ullo concubitu atque immunda libidinis attrectatione perseverantissime vivere, ut etiamsi separata conjugia locum ducendi alias moriendo aperuerint, claudatur ex voto quod patet ex licito, et quod erat necessitate coeptum, fiat charitate perfectum. Talibus profecto id retribuetur, quod illis qui vel pari consensu cum conjugibus hoc voverunt, vel nullis conjugiiis alligati propter majus bonum continentiam delegerunt. Si autem ita se continent, ut si moriantur quarum vita conjugari impediuntur, alias ducere cogitent; profecto etiamsi prius ipsi in tali continentia de corpore abscedant, non eis imputatur nisi ad pudicitiam conjugalem, propter quam non faciunt quod facerent si liceret. Hac quippe intentione continenter vivere, parum est ad accipienda illius quae liberius eligitur continentiae praemia, sed sufficit ad cavenda adulteria.

CAPUT XX.—21. *Viri mulieribus praeire in pudicitia debent. Continentiam clericorum qui electi sunt inviti proponit viris nolentibus in divortio se continere.* Haec autem me de utroque sexu memineris dicere, sed maxime propter viros, qui propterea se feminis superiores esse arbitrantur, ne pudicitia pares esse dignentur: in qua etiam praeire debuerunt, ut eos illae tanquam sua capita sequerentur. Quando autem lex prohibet adulteria, si obtentu incontinentiae carnalis infirmitatis admittatur excusatio, multis sub nomine falsae impunitatis pereundi aperitur occasio. Neque enim carnem non habent feminae, quibus viri aliquid tale nolunt licere, quasi eis, quia viri sunt, liceat. Sed absit ut melioris sexus¹ tanquam honori debeatur, quod pudori detrahitur; cum honor justus virtuti, non vitio debeatur. Quinimo cum a feminis utique habentibus carnem, tantam flagitant castitatem, ut quando ab uxoribus diutissime peregrinantur, velint eas ab adulterino concubitu incontaminatas fervorem transigere juventutis (et plurimae pudicissime transigunt, et maxime Syrae, quarum mariti negotiandi quaestibus occupati, juvenes ado-

[¹] Er. et MSS. *diligant*.

[²] Sola editio Lov.: *Sed absit hoc a meliori sexu, ut tanquam, etc.*

lescentulas deserunt, et vix aliquando senes ad aniculas revertuntur); eo ipso evidentius convincuntur non esse impossibile quod se non posse causantur. Si enim hoc non posset infirmitas hominum, multo minus id posset sexus infirmior feminarum.

22. Unde istos qui virilem excellentiam non putant nisi peccandi licentiam, quando terremus ne adulterinis conjugiiis haerendo pereant in aeternum, solemus eis proponere etiam continentiam clericorum, qui plerumque ad eandem sarcinam subeundam capiuntur inviti, eamque susceptam usque ad debitum finem, Domino adjuvante, perducunt. Dicimus ergo eis: Quid si et vos ad hoc subeundum populorum violentia caperemini? nonne susceptum caste custodiretis officium, repente conversi ad impetrandas vires a Domino, de quibus nunquam antea cogitastis? Sed illos, inquiunt, honor plurimum consolatur. Respondemus: Et vobis timor multo amplius moderetur². Si enim hoc multi Dei ministri repente atque inopinate impositum susceperunt, sperantes se illustrius in Christi haereditate fulgere; quanto magis vos adulteria cavendo, vivere continenter debetis, metuentes non in regno Dei minus lucere, sed in gehenna ignis ardere? Haec atque huiusmodi eis ut possumus dicimus, qui quoquo modo a se discedentibus vel propter adulterium dimissis conjugibus suis, alias volunt ducere, et cum prohibentur, infirmitatem nobis carnis opponunt. Sed jam liber etiam iste claudendus est, et rogandus Deus ut aut eos tentari non sinat separationibus conjugum; aut ita sinat, ut timor periclitantis salutis fiat illis amplioris sive probatoris occasio castitatis.

De Genesi ad litteram, lib. ix. c. 7.¹

Hoc autem (bonum nuptiarum) tripartitum est; fides, proles, sacramentum. In fide attenditur ne praeter vinculum conjugale, cum altera vel altero concumbatur: in prole, ut amanter suscipiatur, benigne nutriatur, religiose educetur: in sacramento autem, ut conjugium non separetur, et dimissus aut dimissa nec causa prolis alteri conjugatur. Haec est tanquam regula nuptiarum, qua vel naturae decoratur fecunditas, vel incontinentiae regitur pravitas.

AFRICAN CODE.

Canon 102² (= Canon 8 of the Synod of Carthage of 407 A.D.).

Placuit, ut secundum evangelicam et apostolicam disciplinam neque dimissus ab uxore, neque dimissa a marito alteri conjungantur, sed

[¹] Sola editio Lov.: *Et vos timor amplior moderetur.*

² Migne's Ed. tom. iii. p. 397.

³ Mansi, tom. iii. p. 806.

ita maneant, aut sibimet reconcilientur. Quodsi contempserint, ad poenitentiam redigantur. In qua causa legem imperialem petendum est promulgari.

S. INNOCENT I.

*Epistle ii. to Victricius of Rouen. c. 13.*¹

Si enim de omnibus haec ratio custoditur, ut quaecumque vivente viro alteri nupserit, habeatur adultera, nec ei agenda poenitentiae licentia concedatur, nisi unus ex iis defunctus fuerit: quanto magis de illa tenenda est, quae ante immortali se sponso conjunxerat et postea ad humanas nuptias transmigravit.

*Ad Exsuperium Episcopum Tolosanum, c. 4.*²

Et illud desideratum est sciri, cur communicantes viri cum adulteris uxoribus non conveniant, cum contra uxores in consortio adulterorum virorum manere videantur. Super hoc Christiana religio adulterium in utroque sexu pari ratione condemnat. Sed viros suos mulieres non facile de adulterio accusant, et non habent latentia peccata vindictam: viri autem liberius uxores adulteras apud sacerdotes deferre consueverunt, et ideo mulieribus prodito earum crimine communio denegatur: virorum autem latente commisso, non facile quisquam ex suspicionibus abstinetur. Qui utique submovebitur, si ejus flagitium detegatur. Cum ergo par sit causa, interdum, probatione cessante, vindictae ratio conquiescit.

c. 6.

De his etiam requisivit dilectio tua, qui interveniente repudio alii se matrimonio copularunt: quos in utraque parte adulteros esse manifestum est. Qui vero vel uxore vivente, quamvis dissociatum videatur esse conjugium, ad aliam copulam festinarunt, neque possunt adulteri non videri, in tantum ut etiam hae personae, quibus tales conjuncti sunt, etiam ipsae adulterium commisisse videantur: secundum illud quod legimus in evangelio. *Qui dimiserit uxorem suam et duxerit aliam, moechatur: similiter et qui dimissam duxerit, moechatur.* Et ideo tales omnes a communione fidelium abstinendos. De parentibus autem, aut de propinquis eorum, nihil tale statui potest, nisi si incentores illiciti consortii fuisse detegantur.

¹ Migne's Ed. *Pat. Lat.* tom. xx. p. 379.

² Mansi, tom. iii. p. 1040.

*Epistle xxxvi. to Probus.*¹

Conturbatio procellae barbaricae facultati legum intulit casum. Nam bene constituto matrimonio inter Fortunium et Ursam captivitatis incursus fecerat naevum, nisi sancta religionis statuta providerent. Cum enim in captivitate praedicta Ursa mulier teneretur; aliud conjugium cum Restituta Fortunius memoratus inisse cognoscitur. Sed favore Domini reversa Ursa nos adiit, et nullo diffitente, uxorem se memorati perdocuit. Quare, domine fili merito illustris, statuimus, fide catholica suffragante, illud esse conjugium, quod erat primitus gratia divina fundatum; conventumque secundae mulieris, priore superstite, nec divortio ejecta, nullo pacto posse esse legitimum.

S. LEO THE GREAT.

*Epistola clix. Ad Nicetam Episcopum Aquileiensem.*²

Cum ergo per bellicam cladem et per gravissimos hostilitatis incursus, ita quaedam dicatis divisa esse conjugia, ut abductis in captivitatem viris feminae eorum remanserint destitutae, quae cum viros proprios aut interemptos putarent, aut nunquam a dominatione crederent liberandos, ad aliorum conjugium, solitudine cogente, transierint. Cumque nunc statu rerum, auxiliante Domino, in meliora converso, nonnulli eorum qui putabantur periisse, remeaverint, merito charitas tua videtur ambigere quid de mulieribus, quae aliis junctae sunt viris, a nobis debeat ordinari. Sed quia novimus scriptum, quod a *Deo jungitur mulier viro*, et iterum praeceptum agnovimus ut *quod Deus junxit homo non separet*, necesse est ut legitimarum foedera nuptiarum redintegranda credamus, et remotis malis quae hostilitas intulit, unicuique hoc quod legitime habuit reformetur, omnique studio procurandum est ut recipiat unusquisque quod proprium est.

Nec tamen culpabilis judicetur, et tamquam alieni juris pervasor habeatur, qui personam ejus mariti, qui jam non esse existimabatur, assumpsit.

Et ideo si viri post longam captivitatem reversi ita in dilectione suarum conjugum perseverent, ut eas cupiant in suum redire consortium, omittendum est et inculpabile judicandum quod necessitas intulit, et restituendum quod fides poscit.

¹ Migne's Ed. *Pat. Lat.* tom. xx. pp. 602, 3.

² Migne's Ed. tom. i. pp. 1136-7.

Si autem aliquae mulieres ita posteriorum virorum amore sunt captae, ut malint his cohaerere quam ad legitimum redire consortium, merito sunt notandae; ita ut etiam ecclesiastica communione priventur: quae de re excusabili contaminationem criminis elegerunt, ostendentes sibimet pro sua incontinentia placuisse, quod justa remissio poterat expiare.

ARABIC CANONS OF S. HIPPOLYTUS (so-called).

*Canon 16.*¹

Canon decimus sextus de eo, qui habet concubinam, qua spreta aliam ducere vult.

Si Christianus, postquam cum concubina speciali vixit, quae ex ipso peperit filium, illa spreta (aliam foeminam) ducere vult, est occisor hominis, nisi forte in fornicatione illamprehenderit.

AMBROSIASTER.

*Commentary on 1 Cor. vii. 10, 11.*²

Hoc Apostoli consilium est, ut si discesserit propter malam conversationem viri, jam innupta maneat. *Aut viro suo reconciliari.* Quod si continere se, inquit, non potest, quia pugnare non vult contra carnem, viro reconcilietur; non enim permittitur mulieri, ut nubat, si virum suum causa fornicationis dimiserit, aut apostasiae, aut si illicita impellente lascivia, usum quaerat uxoris; quia inferior non omnino hae lege utitur, qua potior. Si tamen apostaverit vir, aut usum quaerat uxoris invertere; nec alii potest nubere mulier, nec reverti ad illum. *Et virum uxorem non dimittere.* Subauditur autem, excepta fornicationis causa. Et ideo non subiecit dicens, sicut de muliere: quod si discesserit, manere sic; quia viro licet ducere uxorem, si dimiserit uxorem peccantem: quia non ita lege constringitur vir, sicut mulier; caput enim mulieris vir est.

OPUS IMPERFECTUM IN MATTHAEUM.

Hom. 32.

Amen dico vobis, quicumque dimiserit uxorem suam, nisi fornicationis causa, moechatur. Omnis res, per quas causas nascitur, per ipsas absolvitur. Matrimonium enim non facit coitus, sed voluntas: et ideo illud non solvit separatio corporis, sed separatio voluntatis. Ideo qui dimittit conjugem suam, et aliam non accipit,

¹ De Haneberg, *Canones S. Hippolyti Monachii*, 1870, p. 72.

² Migne's *S. Ambrose*, tom. ii. p. 218.

adhuc maritus est. Nam etsi corpore jam separatus est, tamen adhuc voluntate conjunctus est. Cum ergo aliam acceperit, tunc plene dimittit. Non ergo qui dimittit moechatur, sed qui alteram ducit. Sicut autem crudelis est et iniquus, qui castam dimittit: sic fatuus est et injustus, qui retinet meretricem. Nam patronus turpitudinis ejus est, qui crimen celat uxoris.

Introductory statement.

General features of the period.

The second period of Christian antiquity is markedly different from the first. The scourge of outward persecution has passed away. The tide of human fashion takes up and patronizes the Church of Christ. In the imperial court, in the drawing-rooms of society, in the assemblies of the educated, it is usual, and even commendable, to be a follower of the Crucified. The laws of Christian morals cannot indeed, so far as they are at variance with the tone and traditions of the Roman Empire, be embodied in the laws of Rome, for, though Christianity has become a prominent power, Christianity has not swallowed up the world. A great proportion of the population throughout this period are *pagani*, the country people, rude, illiterate, uncultivated; not readily touched either by the follies or by the repentances of the capital, they remain *pagans*; and among the educated classes themselves, while Christianity is becoming more and more accepted, it is not till the close of the period that it can claim to be in any sense universal. In any question of morals, as the word implies, the conventional tone of the age must play an important part; and in a matter at once so fundamental in character and so general in usage as the institution of marriage, to overlook the part played by the conventional tone is simply to vitiate the survey. The investigation which we have pursued with regard to the three first centuries of the Christian era has led to the conclusions that (1) the continuous and consistent teaching of that time was that Christian or Holy Matrimony was in its essential character indissoluble, but that (2) the *communis sensus* of the Church had not availed to prevent certain persons from having recourse to the permission of the secular law to contract fresh unions after divorce, and that, at any rate in some of these cases known to Origen, the bishops themselves had not withheld their countenance. This then was the

attitude of Christianity towards the question of remarriage after divorce at the time when Constantine accepted the doctrines of Christianity. (314 A.D.) From that time onwards the Church had to suffer the ingress of every description of unworthy applicant. Courtiers greedy for place and emolument, fashionable ladies living for pleasure and display, soldiers with the free manners of the camp, hangers-on and serving men of every kind ready to qualify for whatever might be going; these and a mongrel crowd of others like them filled the new basilicas which rose resplendent with gold and jewels in the great cities of the Empire. The faith and the patience of the saints were now in some respects more sorely tried than ever before. Is there any difficulty in declaring *a priori* what would be the attitude of at any rate a considerable section of this world-made church towards the ordinance of marriage? Speculative opinions sit lightly enough on unearnest men, but the passions of men are not conquered by the easy assumption of new views, and where the Spirit of the Lord is not, there is not liberty from the passions, but bondage to them. Was it to be supposed for a moment that this new Christian society would accept without a murmur the strict prohibitions of the Christian law? Was such acceptance the more likely because while on the one hand the secular statutes left abundant liberty to all laxity of practice, on the other the Spirit of the Church was not yet embodied in any canons or statutes whatsoever, but simply existed as an indefinite tradition in the hearts and consciences of the faithful? And so, in fact, we find in this period that, alongside of the earnest and continued teaching of the indissolubility of marriage on the part of all the great doctors of the Christian Church, there is abundant evidence of laxity of practice on the part of Christian men and women, who would not be bound, and to whom the secular law of Rome was all the law they cared to recognise.

There is another feature of this period which is of great importance to the right understanding both of the period itself and of the whole subsequent history of the Church of Christ. It is at this time that the great divergence of East and West, which later on was to lead to a lasting breach, begins to be

Unworthy
converts.

Divergence
of East and
West.

conspicuous. In nothing is it more conspicuous than in the tendency of the East to what we have come to call Erastianism, and in the determination of the West to maintain spiritual independence at all hazards. And in nothing has this antagonism of spiritual freedom and state control led to more deplorable contrariety than in the whole province of the laws of marriage. For more than a thousand years past the rule and practice of the Church of the East on the subject especially of remarriage after divorce have been altogether irreconcilable with the rule and practice of the West; and in the period now to be reviewed we shall not fail to find the beginnings of this contrariety. In Constantinople the Emperors and the Imperial Court overshadowed and overawed the Patriarchal throne; in old Rome itself the Patriarch of the West was neither overshadowed nor overawed by any. In Constantinople the provisions of the civil law, the pleadings of a present expediency, the blandishments of place and power, dimmed the clear outlines of the moral law of Christ; in Rome Christian men had the courage of their convictions, and their convictions held the day.

The Church in the East subservient to the State; in the West independent.

These considerations will place us in a better position to understand the evidences of Christian belief and practice in the period from Constantine to Justinian. To appreciate their force it will be necessary at the outset to examine the provisions of the secular law, and the influence of these upon the practice of the Empire.

The Roman law of divorce. Divorce by mutual consent.

Foremost among the provisions of the secular law must be remembered the unfettered liberty of divorce by mutual consent. The laws of Constantine (331 A.D.), of Honorius and Theodosius (421 A.D.), of Theodosius and Valentinian (449 A.D.) alike left this permission untouched. Throughout this period, as before, it was always possible, so far as the secular law was concerned, for a husband and wife to effect a divorce by simply agreeing to effect it; and, of course, if Christians wished to avail themselves of this liberty, it was as much open to them as to others.

This simple consideration renders at once absurd all attempts to argue from Roman legislation under the Christian emperors as though such legislation were itself Christian. Alike in East and West the attitude of the Church to the practice of divorce

by mere consent was uniformly hostile; and there is no instance in any age or in any part of the Church of a Christian writer who justifies, or of a Christian council which sanctions, this fatal facility.

Next as regards divorce effected by one party on the ground of offence by the other, the legislation of the period shews considerable advance in the direction of restriction. This advance was doubtless due in some degree, if not entirely, to the pressure of Christian feeling; but while the tendency of change was so far in the right direction, a survey of the marriage legislation of the period will shew at a glance how immeasurably short it fell of the high standard taken up by the Christian writers.

It was the Emperor Constantine, who in 331 A.D., doubtless under Christian influences, revived the legislation against capricious repudiations. The *lex Julia et Papia Poppaea* had deprived the author of a causeless divorce of the material advantages which marriage had brought to him; and proceeding farther on the same lines the law of Constantine specified the causes for which alone one party could divorce the other without incurring penalties. They were as follows:

Divorce on grounds of offence.

Legislative restrictions
(i) Constantine.

A. A wife might repudiate her husband for—

- (1) murder,
- (2) the preparation of poisons,
- (3) the violation of tombs.

If a wife divorced her husband for any other reason, as *e.g.* for being a drunkard, or a gambler, or for being given to the society of loose women, the divorce seems to have stood good in law, but the wife forfeited her dowry, and was punishable with deportation.

B. A husband might divorce his wife for—

- (1) adultery,
- (2) the preparation of poisons,
- (3) being a procuress.

If a husband divorced his wife for any other reason, the divorce appears to have stood good in law, but the husband forfeited all interest in his wife's dowry; and if he married again, the divorced wife was authorized to seize the dowry of the second wife.¹

¹ Cod. Theod. iii. 16. 1.

(ii) Honor-
ius and
Theodosius

The Emperors Honorius and Theodosius, in imposing restrictions afresh (421 A.D.), did not see fit to re-impose the provisions of the law of Constantine. It was enacted instead that—

- A. (a) If a wife divorced her husband for grave reasons, or for crime, she could retain her dowry and the gifts made to her by her husband on betrothal, and could marry again after five years.
- (b) If for breaches of morality, or for moderate faults, the wife forfeited her dowry and the *donatio*, and was forbidden to marry again.
- (c) If without any proved ground, the wife forfeited dowry and *donatio*, was forbidden to marry again, and was not to receive pardon from the Emperor.
- B. (a) If a husband divorced a wife for a serious crime, the husband retained the wife's dowry, and could at once marry again.
- (b) If for immorality, but not crime, the husband might not retain the property brought by the wife into the marriage, but could at once marry again.
- (c) If for mere dislike, the husband forfeited the *donatio* as well as the dowry, and was forbidden to re-marry.¹

(iii) Theo-
dosius and
Valentinian

From whatsoever cause, these provisions seem to have soon become a dead letter. Perhaps they were too strict for the public conscience; but, however this may have been, in 449 A.D. Theodosius and Valentinian are found introducing new legislation. It was now enacted that—

- A. A wife could divorce her husband without blame if he were convicted of any of the following offences:
 1. Treason.
 2. Adultery.
 3. Homicide.
 4. Poisoning.
 5. Forgery.
 6. Violating sepulchres.

¹ Cod. Theo. iii. 16, 2.

7. Stealing from a church.
8. Robbery, or assisting or harbouring robbers.
9. Cattle-stealing.
10. Attempting the wife's life.
11. Introducing immoral women into the house.
12. Beating or whipping the wife.

If the wife divorced her husband on any other ground she forfeited her dowry, and could not marry again for five years.

B. A husband could divorce his wife for any of the above reasons (the 11th of course excepted), and also for—

1. Going to dine with men not her relatives without the knowledge or against the wishes of her husband.
2. Going from home at night against his wishes without reasonable cause.
3. Frequenting the circus, theatre, or amphitheatre after being forbidden by her husband.

[To these grounds Justinian added—

4. Procuring abortion.
5. Frequenting baths with men.]

If a husband divorced his wife on any other ground he forfeited all interest in his wife's dowry, and also his own *donatio ante nuptias*.¹

The provisions of the secular law which have been now particularised are important in the present investigation on two grounds. The first of them is the great divergence which is seen to exist between the secular law and the Christian teaching, a divergence which explains the attitude of the Christian Church in the matter, and which at the same time makes all reference to the secular Roman law as to a Christian authority a thing absurd. The second ground on which these provisions are important is their subsequent history in connexion with the Canon Law of the Eastern Church. It will be seen, that while the facility of divorce by mutual consent was eventually overthrown in the Empire by the power of the

Dis-
crepancy of
Christian
and secular
law.

Bearing on
the Eastern
Canon law.

¹ Cod. (Just.) v. 17, 8.

Church, many other grounds of divorce entirely unknown to early Christianity were gradually admitted into the practice of the Churches of the East, by transference from the secular laws of the Empire.

Christian
authorities.
Council of
Arles.

The Christian authorities of the period may now be considered. The first of the series of extracts given above is taken from the canons of the Council of Arles. This council, which was held in the year 314 A.D., was the first Christian assembly gathered under Imperial auspices. The immediate object of the council was to decide the Donatist controversy, but the disciplinary difficulties which had already arisen on various questions, and not least—as is seen from Origen's statement—on questions of marriage, would naturally come up for discussion at so important a meeting. The canon should be plain enough to those who understand the relations of the early Church to the secular law.¹ It asserts that young men who are Christians are prohibited (*i.e.* by the Christian discipline, certainly by nothing else) to marry again, although they detect their wives in adultery; it assumes that they will put away the wives so detected in adultery; and it lays down that every effort should be made in the way of giving such young men counsel to the effect that they are not to avail themselves of their civil privileges to contract a fresh marriage. The reason is the *vinculum*. They are not to marry others “so long as their wives are living, though in adultery.” The wife is the wife still, consequently the husband is the husband still. The difficulty which some writers have experienced in understanding this canon appears to be simply due to the fact that they were not familiar with the state of things which arises in questions of marriage when the law of the Church and the law of the State are not at one. The canon of the Council of Arles is at this present time being largely acted upon in most of the countries of Western Christendom. A man discovers the adultery of his wife, puts her away, and, for better security

The innocent
husband may
not remarry

¹ “As to those who detect their wives in adultery, and the same are baptized young men, and (so) are forbidden to marry, it is decreed that so far as may be counsel be given them that, while their wives are living, although adulteresses, they do not marry others.”

against the possibilities of inheritance and other consequences, avails himself of the legal power of divorce. He is then free before the secular law to marry another woman, but the canon of Arles would tell him that he is nevertheless prohibited to marry, and would expect the clergy to make it their business to bring this home to him. This is what in fact the clergy, whether of the Roman Catholic Church or of the Anglican Church, commonly do. They give the injured husband counsel as far as they have the opportunity (*in quantum possit*) not to marry again.

In one of the manuscripts containing the canons of the Council of Arles, and known as the *Codex Lucensis*, six additional canons are given. Additional
Canons of
Arles. Mansi thinks that they probably belong to some other Council of Arles. The so-called 24th Canon of Arles, which we have quoted, is itself proof that the additional canons do not belong to the great Council of Arles, since it covers the same ground as the canon already noticed, and in a somewhat different manner. The so-called 24th Canon, however, must mount up to a high antiquity, and in the absence of any very clear indication of date may as well be noticed here. The man is to be warned as far as possible that it is not lawful, while his dismissed wife is living, to marry another in addition to her (*super eam*), "But whosoever shall have done this shall be cut off from the Catholic communion." This is a clear excommunication, following on the statement that the wife is still the wife, and that any other woman now taken is taken *super eam*. It will not be overlooked that the person excommunicated is the husband, and the *innocent* husband so far as concerns the ground of the separation.

The Council of Ancyra, the capital of Galatia, appears to Council of
Ancyra. have been held at some time subsequent to the death of the Emperor Maximilian, and before the death of Vitalis, Bishop of Antioch, who was present at the Council. The date will therefore fall between 313 A.D. and 319 A.D. Hefele says that the Council of Ancyra may be considered a "*concilium plenary*", that is a general council of the churches of Asia Minor and Syria."¹ The 20th Canon decides the penalties of

¹ Hefele, *Councils to 325 A.D.*, English Edition, p. 201.

adultery. Its wording, however, is by no means clear. The offending person is to pass seven years in the different degrees of penance; but whether the offending person first specified is the guilty wife, or her partner in sin, or a collusive husband, has been disputed. Perhaps the most probable rendering is as follows: "If any one have violated a married woman, or have broken the marriage bond, he must for seven years undergo the different degrees of penance, at the end of which he will be admitted into the communion of the Church." It would appear from this canon that the license which was assumed by men in the Christian Churches of the East in the time of S. Basil was at this earlier period by no means recognised.

Council of
Neo-
Caesarea.

The Council of Neo-Caesarea in Cappadocia appears to have been held a little later than that of Ancyra, but before that of Nicaea. It has been usually assigned to 315 A.D., but Hefele thinks that the date should be placed somewhat later, as there is no question at this Council on the subject of the lapsed. The 8th Canon is as follows: "If the wife of a layman have committed adultery, and be publicly convicted of her sin, such layman cannot be admitted to the service of the Church. But if she have committed adultery after her husband's ordination he must leave her. If, however, he persist in living with her he cannot retain the sacred functions which have been entrusted to him." It does not appear whether the restoration of a penitent adulteress would be recognised or not.

Lactantius.

The next extract is from Lactantius. Lactantius was tutor to Constantine's son. He was a convert who embraced Christianity from conviction, and, as an apologist, he brought to the service of his new faith the cultivated style of a rhetorician. His acquirements as a master of Christian doctrine were, however, hardly on a par with his command of argument and of language. Bishop Bull says of him: "He was a rhetorician, not a theologian, nor has he ever obtained a place among the doctors of the Church." For the present investigation Lactantius is remarkable as being the first writer in the history of the Christian Church, whose language unquestionably expresses the view that the innocent husband who has put away his wife for divorce is free to marry another

woman. He says that "he is an adulterer . . . who has married one dismissed by her husband, as also he, who except for the crime of adultery has dismissed his wife to marry another,"¹ and "He (our Lord) commanded that a wife be not dismissed except after conviction of adultery, that so the tie of the marriage covenant may never be undone, except when it is broken by faithlessness."² It appears therefore that whatever the views of Lactantius may or may not be worth, this Christian layman in the court of Constantine did distinctly hold that the *tie* of marriage was undone by faithlessness, and that the innocent husband at least was at liberty to marry again.

A man who puts away his wife for adultery may marry again.

Before leaving Lactantius it is worth while to notice that although he expresses himself in favour of the laxer view as regards the remarriage of the innocent husband, what he is insisting upon in a treatise addressed to Constantine is naturally, not the freedom in the particular instance, but the strictness of the Christian law except for it. To a Roman Emperor, the laws of whose Empire freely admitted divorce "for every cause," and knew of no adultery in a man unless his sin were with the actual wife of another, Lactantius writes that the following maxims are Divine; "that he is an adulterer, who has married one dismissed by her husband, as also he who, except for the crime of adultery, hath dismissed his wife to marry another." And the tie of marriage, the "*conjugalis foederis vinculum*," is not to be undone except when it is broken by faithlessness. The man and the woman are on the same footing. "As the woman is tied by the bonds of chastity to desire no other, so let the man be holden by the same law, since God has firmly bound the husband and wife in the frame of one body."³ The strictness of the Christian law, even as understood by Lactantius, was simply revolutionary. It is not improbable that this "apology" of the Christian tutor played a considerable part in leading to that celebrated revision of the license of divorce, which was promulgated in 331 A.D., and to which reference has already been made.

A man who marries a divorced woman is an adulterer.

¹ Lactantius, *Divinarum Institutionum adversus Gentes*, lib. vi. c. 23.

² Lactantius, *Epitome*, c. lxvi.

³ *Ibid.* *Epitome*, c. lvi.

The cause
which justifies
putting away is
post-nuptial sin.
S. Basil
the Great.

It should be noted that the cause which with Lactantius justifies putting away is post-nuptial sin. The tie is not dissolved "unless she have broken it by faithlessness." It has therefore existed, and the sin is the sin of adultery.

The next writer cited is S. Basil the Great, who was born in 329 A.D. at Caesarea, the capital of Cappadocia. His parents were Christians by descent on both sides. His father, also named Basil, was an advocate and teacher of rhetoric, celebrated for the Christian virtues. The elder Basil and his wife Emmelia were blessed with a family of ten children, five of each sex. S. Basil was the eldest of the family. He would grow up in all the best traditions of a Christian gentleman's household in Cappadocia. We shall find him holding exactly the same views as all the other great Christian doctors, but stating them with a certain apologetic tone, and deprecating with a painful sense of contrast the laxity actually prevalent in Christian society.

Grounds of
separation.

Early in his career, while organising the monasteries of Pontus, he drew up the *Ethica*¹ (*Moralia*), a code of "Christian Institutes," as they have been called. This compilation for the most part gives the moral teaching of Christianity in the very words of the New Testament. The words which are S. Basil's own are to be found chiefly in the rules or canons (*Ῥῆσος*, *Regula*), which as summings up precede the citation of the passages on which they are based. In the 73rd section of the *Ethica* there are two such rules or summings up, which are important. The first of these lays down that "the husband must not separate from the wife, nor the wife from the husband, except on detection in fornication (*εἰ μὴ τις ἂν ἐπὶ πορνείᾳ ἀλῶ*), or hindrance in piety." It bases on the texts S. Matthew v. 31, 32; S. Luke xiv. 26; S. Matthew xix. 9; 1 Cor. vii. 10. There are here several points worthy of notice. Separation of life is permitted not only on the ground of fornication, but also on that of hindrance in piety. The wife is

¹ Sozomen informs us that in his time the ascetic writings usually attributed to S. Basil were ascribed by some to Eustathius of Sebaste. As Eustathius was a contemporary and friend of S. Basil, the date of these passages would not in any case be much affected.

allowed to put away her husband on each of these grounds, as well as the husband the wife. *Πορνεία* to S. Basil is post-nuptial adultery; for separation on account of it is permitted to the wife as well as to the husband, and it is unknown to any code that prenuptial fornication on the part of the man should be a ground for the dissolution of marriage. That *πορνεία* with S. Basil means adultery is clear also from the wording "if any be taken in *πορνεία*," which cannot well be made to refer to the past.

The second of the rules quoted is important for the question of remarriage after divorce. The only text here cited by S. Basil is the difficult passage S. Matthew xix. 9. The rule or summing up deduced from the text is the absolute prohibition of remarriage under all circumstances: "It is not lawful for him that hath put away his own wife to marry another, nor for her that is put away from a husband to be married to another."¹ The text of S. Matthew xix. 9, as we have it in the printed editions of S. Basil, has the clause *καὶ γαμήσῃ ἄλλην*. Whether this reading was before S. Basil, or whether his later copyists have altered the reading, is not apparent; but what is apparent is, that in the text as S. Basil had it, he saw no exception sanctioned to the great universal rule that there must be no remarriage after divorce.

A few years later, probably soon after his ordination as priest, which took place in 364 A.D., S. Basil wrote and preached the *Hexameron*, a course of homilies on the Creation. He passes from the creation of the marine animals to a somewhat forced and fanciful digression about the married state, and in the course of it teaches that a wife should "on no plea consent to tear asunder the union."²

We come next to the so-called *Canons of S. Basil*, a body of regulations which came to be received in the Church as of the highest authority. They were not in the first instance put forth by S. Basil with any view to such employment, but formed the subject of certain letters which he wrote in 374 A.D. to S. Amphilochius, bishop of Iconium. These letters are to be found in the series of S. Basil's Epistles, numbered respectively

πορνεία
is adultery.

S. Matthew
xix. 9.

Inequality
of treat-
ment in the
cases (1) of
men and (2)
of women.

¹ S. Basil, *Ethica*, Regula 73, c. 2.

² *Ibid.* *Hexameron*, vii. § 5.

188, 199, and 217. In the 9th Canon he reiterates what we have already seen to be his judgment that, by our Lord's decision, the wife was equally justified with the husband in putting away for fornication; and that the husband was not justified in putting away, except for fornication (*παρεκτὸς λόγου πορνείας*). Although, however, S. Basil is clear about our Lord's decision, he is perplexed to find that the "custom" of the Christian community is not in accordance with it. On the one hand, "in respect of the wives we find great strictness"; husbands are expected by the custom of the time to put away adulterous wives. Texts of Scripture are adduced, as the saying of S. Paul that "he that is joined to an harlot is one body," and the Septuagint version of Proverbs xviii. 22: "He that retaineth an adulteress is foolish and impious." So far the feeling is in accordance with the spirit of the earliest Christianity. But in the reference to Jeremiah to justify the husband in repelling a penitent adulteress on her return, we see an abandonment of the earlier Christian charity in favour of the sternness of the Roman secular law, and of the common usage. This is the attitude as regards the erring wife in the time of S. Basil. On the other hand, "custom enjoins that husbands even living in adultery, and going on in whoredoms, be retained by their wives." S. Basil is of opinion that by the Divine teaching the woman should have equal freedom with the man to claim separation of life; but the practice of Christian society in this matter has come to be in no wise different from the practice of the outside community and of the Roman law. If the husband offend, the wife is certainly not required, and is barely permitted by the custom of the day to put him away; "if the cause be his living in unchastity, we have not this rule in our ecclesiastical custom." He feels that in the face of this general attitude of Christian society, which makes it so little justifiable for a wife to put away her husband, whatever be the cause; and which in consequence treats the husband so put away as free to avail himself of the secular law and marry again without Christian condemnation (for this seems to be implied); he is not prepared to visit the parties with the penance due to adultery. "So that I know not

whether she that cohabits with the man whom his wife hath put away can be 'called an adulteress.'” There is the somewhat parallel case, he notices, of the innocent husband whose adulterous wife has gone to another man. Here too, by the ecclesiastical custom, “the forsaken husband is pardoned, and she that cohabits with him is not condemned.” It was understood in Christian society, doubtless not only in Cappadocia, but in that wider Eastern Christendom with which S. Basil was acquainted, that the innocent husband who contracted a fresh marriage was together with his new partner to be admitted to union and communion, and not to be branded with the penance of the adulterer. When the husband put away his wife without justification, and married another, the custom of the day had another voice. “If, however, the husband depart from his wife, and betake himself to another, both he is an adulterer, because he maketh her to commit adultery, and she who cohabits with him is an adulteress, because she transferred another woman’s husband to herself.”¹

This passage from S. Basil is of great significance for the proper understanding of what was going on in the Christian Church. From the point of view of principle, of “our Lord’s decision,” of the theology of the subject, as we might say, S. Basil is as clear as the day. He stands where all the other great Christian doctors stand. He knows nothing of permitted remarriage after divorce; but he is perplexed and hesitating as to anything like penal action. In the sixty years which have elapsed since Constantine avowed his conviction of the truth of Christianity, the world has crowded into the Church till the current morality of Christians has cast itself rather in the mould of the secular code than in that of the law of Christ. As the secular code would exempt from all blame in remarriage both the man who has put away a guilty wife, and the man whom the wife has put away, so, at least in the Eastern portion of the Empire, does Christian society. Here is a change indeed. The Church has been so far converted by the world, and that so completely that S. Basil practically declines the conflict. “Things being as they are,” he seems to say, “let us not stir a

Concession
of S. Basil.

He does not
approve
the re-
marriage of
the man,
but he
admits it
without
penalty.

¹ S. Basil, *Canon 9*.

muddy stream." Looking back in the light of all the subsequent sad laxity of the Eastern Church, we may feel that he was wrong; that if it was true, as he taught, that "it is not lawful for him that hath put away his own wife to marry another, nor for her that is put away from a husband to be married to another,"¹ then it was his duty not only to teach it, but to enforce it, though the heavens fell. But let those judge S. Basil who know what it is in the present day to face an almost overwhelming consensus of English society on this very subject. Such men know that there is needed for right action not only faith and obedience, but a clear perception of the great issues involved. Failing this, the promptings of individual charity combine with what seems the obvious present expediency of concession to lead the clergy now to take up exactly the attitude taken up by S. Basil. They would decide: "Let there be nothing penal; above all, let there be no excommunication. There shall be no approval, but let the conduct of the parties be between themselves and God." The Eastern Churches are the commentary on this attitude, which those who will may find written broadly across the page of history.

No penalty
for the
adultery of
a man with
a woman
unbound.

In the 21st Canon, an extract from which comes next in the passages cited above, the same perplexity is expressed as in the 9th. There is no canon, says S. Basil, for bringing to punishment an adulterous husband, "if the sin take place with one not bound in marriage." As has been noticed, this to the Roman law was not adultery but *stuprum*; and S. Basil indicates that Christian society has come to take the same view of it. On the other hand the same society insists that "he that retaineth an adulteress is senseless and profane." "And so the wife must receive her husband coming home from his uncleanness, but the husband must send away her who is defiled from his house. Of all this, again, it is not easy to give account; but custom has thus prevailed."²

An adul-
teress may
not be
retained.

Absence of
husband no
justification
of re-
marriage
of wife.

The 31st Canon lays down that the absence of the husband does not justify the remarriage of the wife unless she is persuaded of his death. "If she cohabit with another, she commits adultery." The 36th Canon asserts the same even of

¹ S. Basil, *Ethica*. Regula lxxiii. 2.

² *Ibid.* Canon 21.

the wives of soldiers, though S. Basil is of opinion that more allowance should be made in their case, as the presumption of death is greater.

The line taken by S. Basil in the matter of absence without tidings is a remarkable instance of the value of firmness on points of principle. The secular law permitted divorce with remarriage on this ground, but the Canon of S. Basil now referred to induced the later Eastern Church to take the stricter view; and the ground of absence without tidings, with the related grounds of captivity and slavery, are the only instances of opposition made by the Churches of the East to the grounds of divorce which were specified in the legislation of Justinian. The result is that the 31st Canon of S. Basil is at this moment the law of the Christian East in this matter.

The 39th Canon is important as meeting the sentiment, not confined to one age, that lapse of time may take away the adulterous character from a union confessedly adulterous at the beginning. "She who lives with an adulterer," says S. Basil, "is an adulteress all the time (*πάντα τὸν χρόνον*)."

Time does not remove the adulterous character of an union.

The 46th Canon treats the case of a woman who has unwittingly contracted an adulterous union by marrying a man whose wife was absent. She has committed fornication (here again *ἐπόρνευσε* refers to post-nuptial adultery), but unwittingly. She may marry, for she is not bound; but S. Basil would, under the circumstances, prefer to see her remain unmarried.

In the 48th Canon he says that a woman who is forsaken ought to remain unmarried. In the case treated in the 46th Canon his words were, "It is *better* if she remain thus." In the case of the woman whose husband, though he has forsaken her, is living, he says, "in my judgment, she is *bound* to remain (*i.e.* unmarried)." His reason is most cogent. "If our Lord said, 'Whoso leaveth his wife, except for the cause of fornication, causeth her to commit adultery,' by calling her an adulteress, He hath excluded her from union with another, it being impossible for the husband to be guilty, as causing adultery, and the wife to be without blame, denominated as she is an adulteress by the Lord on account of her connection with another man."

The forsaken woman to remain unmarried.

Penances. The 58th and 77th Canons prescribe the penances due to those adulterers who in S. Basil's judgment have deserved them. The 58th is concerned with the man "who has committed adultery," by which appears to be intended the corruption of another man's wife. Such an one is to be visited with fifteen years of exclusion from Communion, of which four are to be spent among the Mourners, five among the Hearers, four among the Substrati, and two among the Consistentes. The 77th Canon is concerned with the man who without cause deserts his wife and marries another. "By the Lord's decree he incurs the sentence of adultery. And it was enacted by our Fathers that such should be Mourners for a year, Hearers for two years, Substrati three years, and in the seventh year should take their stand with the Faithful: and so be deemed worthy of the Offering, if with tears they repent."

The
treatise on
"True Un-
defiledness
in
Virginity."

There is some doubt whether the treatise *On True Undefiledness in Virginity* is rightly ascribed to S. Basil. Canon Venables says of it that it is "rejected by Garnier on internal evidence, but generally accepted."¹ It is addressed to Letoius, bishop of Melitene, to whom also S. Gregory Nyssen wrote his *Epistola canonica*. The *date* is not therefore much affected by any doubts as to S. Basil's authorship. Garnier's arguments are that (1) the style differs from that of S. Basil, (2) that some of the matter is prurient rather than edifying, and (3) that Letoius did not attain the episcopal dignity till after S. Basil's death. On the other hand S. Gregory Nazianzen appears to refer to this treatise as S. Basil's.

The writer argues that a consecrated virgin who forsakes her vows and marries is really guilty of adultery. It is useless to plead that there has been the legal solemnization with all the usual outward circumstances. All that, he says, might accompany the remarriage of a woman whose true husband was living, but it would not make it a marriage before God. "If this marriage be thus manifest by witnesses and processions and in every way, but her husband be not, I say, dead; then such an one commits adultery, committing adultery thus throughout her life, if her husband continue to live; or rather

¹ *Dictionary of Christian Biography*, Art. "Basilus of Caesarea."

abandonedly playing the harlot for the enjoyment of pleasure, but also, because her husband is living, committing adultery in transgression of the law."

The views of the great Eastern doctor may be summarized as follows. Like all other Christian teachers he permits the putting away of a wife for adultery, and would seem to have no quarrel with the custom of his day which required such putting away; but he holds that the wife should be equally at liberty to put away an adulterous husband, and laments the current feeling which denied this liberty. The justifying cause is post-nuptial sin, which may, however, be not only literal adultery, but "hindrance in piety." He has no approval of the remarriage of the husband after divorce, whether he have put away his wife for adultery, or have been put away for a like cause by his wife. In neither case, however, is he prepared, in the face of public feeling, to assign any term of penance and exclusion from communion. In referring to S. Matthew xix. 9 he does not appeal to it as justifying marriage in the case of divorce for adultery.

Admitted practice has not commonly long to wait before it finds apologists. S. Epiphanius, bishop of Salamis in Cyprus, was born perhaps between 310 A.D. and 320 A.D., and died in 404 A.D. He is rightly esteemed as a zealous champion of the faith; his greatest work being the *Panarion*, in which he undertakes to refute the heresies of his day. In this work he distinctly states that it is lawful for a man, who is living in separation "for whatever ground—fornication, or adultery, or other evil cause," to marry again. "Him the word of God censures not, though he be joined to a second wife (or a wife to a second husband), neither doth it declare them cast out from the Church, and from life, but bears with him by reason of his infirmity." Thus S. Epiphanius is the second Christian writer,¹ and the first theologian, who distinctly justifies remarriage after divorce. He does so alike in the case of the woman and in that of the man; nor can it be inferred from the words he uses that he would be more stringent with the guilty than with the innocent. In the turmoil of speculative beliefs in which

S. Epi-
phanus.

Admits
remarriage
after
divorce.

¹ The first being Lactantius.

S. Epiphanius spent so large a measure of his energies, he hardly seems to have probed the theology of marriage. In the passage cited it is in condemning the rigorism of those who disallowed second marriages even to the widowed that he sanctions the existing allowance of second marriages even to the divorced. That this allowance is more than an *obiter dictum* is improbable; but how far thought out or not, the words are unmistakeable. S. Epiphanius, a Bishop of the Church of Cyprus, fully admits remarriage after divorce.¹

S. Gregory
Nazianzen.

S. Gregory Nazianzen, bishop (370 A.D.—390 A.D.) of Sasima, and of Constantinople, the friend of S. Basil, is the next writer from whom we have quoted. His father, also named Gregory, was in early life attached to the sect of Hypsistarii, but was converted to the Catholic faith, married a pious lady named Nonna, and was soon after chosen and consecrated bishop of Nazianzus. His episcopate lasted forty-five years. The younger Gregory would only know his father in the days when he was a respected Catholic bishop; and the traditions of his home would doubtless be the best traditions of Christian married life. The long extract which has been cited is taken from a sermon on S. Matthew xix., which S. Gregory preached at Constantinople before the emperor Theodosius the Great. This gives his statement a special interest. He is not afraid to remark to the Emperor upon the great discrepancy between Christian precept on the one hand and the secular law and common usage on the other; and it may well be that such teaching as that of S. Gregory had no little share in leading Theodosius to legislate, as we have seen that he did, in the direction of restraining the license of divorce. S. Gregory notices that two things are wrong, viz. (1) custom, and (2) law. He says: "I see in most men a tendency to error, and in their law unfairness and inconsistency."² Like S. Basil, he is unable to accept strictness of discipline for women, and unrestrained license for men. "While a wife planning mischief against her husband's bed is an adulteress, and incurs sharp legal penalties, is a husband, sinning against his wife by

The
Roman law
and the
conven-
tional
morality
both at
fault.

¹ S. Epiphanius, *Panarion*, lix. c. 4.

² S. Gregory Nazianzen, *Oratio*, xxxvii. § 5.

fornication, irresponsible?" Whether this inequality is regarded as a custom of the Christians, or as an "enactment" of the secular law, he is equally opposed to it. "I receive not this enactment, I praise not this custom."

Claims
equality of
discipline
for men and
women.

Another matter in which the secular law and the teaching of Christ are at variance is to be found in the recognized grounds of divorce. "The law indeed allows the bill of divorce for every cause. But Christ not for every cause; rather He allows separation only from the unchaste; all other things He bids men patiently to endure." In speaking of the law S. Gregory may be speaking of the Jewish law, but it seems more probable that the law of Rome, which is here at least as lax as the Jewish law, is what he has in mind. The law, anyhow, is altogether wrong. There is only one rightful ground for putting away. For that ground there is a reason. It is not a reason which affects the *vinculum*; but the reason we have already met with from the earliest age of Christianity, the *confusio prolis*. "And the reason about the unchaste is her making the progeny spurious; but in all other things let us be patient and unmoved." He specifies several offences which should be borne. "Do not thou rashly cut off; do not put away." S. Gregory, though in this passage he is evidently commenting on S. Matthew xix. 9, does not quote the actual words of the verse, and we are not therefore able to say with certainty what his text was. But he makes a remarkable statement, which probably refers to the verse. "It is not clear which side is so endangered, the divorcing party or the divorced." If the passage ran as we have surmised, ὅς ἂν ἀπολύσῃ τὴν γυναῖκα αὐτοῦ μὴ ἐπὶ πορνείᾳ μοιχᾶται, the want of clearness probably lay in the meaning of the word μοιχᾶται. It might mean that the husband would commit adultery; and it might mean that he would cause the wife to commit adultery.

Divergence
between
the secular
and the
Christian
law of
divorce.

S. Matt.
xix. 9.

S. Gregory Nazianzen is thus no less opposed to the laxity of the law of the empire in the matter of divorce than to the inequality of its treatment of men and women. A woman may be put away for unchastity, but it is because of the danger of spurious offspring. Even in this case he says nothing of remarriage. It is not indeed possible to assert

that S. Gregory forbids remarriage after divorce for adultery; but as little can it be asserted that he sanctions it.

A case of
proposed
divorce.

In the collection of the letters of S. Gregory Nazianzen there are two letters numbered 144 and 145, on the subject of a proposed divorce. They are addressed respectively to Olympius,¹ the prefect of the province, and to Verianus, a Christian layman apparently of S. Gregory's diocese, or in the circle of his personal acquaintance, since he speaks of him as his "son." It seems that Verianus had a daughter, whom he was anxious to see divorced from her husband for some reason which does not appear. He accordingly made application to Olympius, the prefect of the province, for a divorce to be granted. Olympius before proceeding to any definite action saw fit to refer the case to S. Gregory, not as a magistrate but as the Bishop of the Diocese (Οὐ γὰρ ὡς λογιστὴν, ἀλλ' ὡς ἐπίσκοπον δηλαδὴ προεβάλετο). S. Gregory, in an interview with the lady, discovered from her tears that although she had from a sense of shame expressed herself in her father's presence as desirous of a divorce, she was nevertheless sincerely attached to her husband. S. Gregory accordingly explains the state of affairs in these two letters, one to the prefect and the other to the father, recommending that the difficulties be overlooked and the proceedings for divorce not pushed to completion. In giving this recommendation to Olympius he reminds him that the divorce sought is a thing "altogether repugnant" to the laws of Christians though not to the civil code.

The
Apostolical
Consti-
tutions.

The Apostolical Constitutions, which appear to be of Eastern origin, and probably represent Eastern Christianity in the fourth century, have a passage of doubtful meaning: "If any younger woman, having lived a short time with her husband, and lost him by death, or *by any other cause*, shall abide by herself, having the gift of widowhood, she will prove blessed." The only cause other than death by which a woman can lose her husband is separation, whether by legal divorce or otherwise. Does this passage then mean that a Christian woman who has divorced her husband, or who has been divorced, is at liberty to marry again by the Christian laws? Not necessarily. Even

¹ S. Gregory Nazianzen, *Epistle* 144.

the lax Christian customs of the fourth century in the East, of which S. Basil complained, are not said to have recognised the remarriage of the woman, though they were indulgent to the man. That the woman could marry, so far as the secular law was concerned, is nevertheless obvious. In remarking therefore, parenthetically, that divorcees as well as widows may find a blessing in the single life, the Constitutions cannot be understood as necessarily recognising the liberty of remarriage in the case of such women as a Christian liberty. The right of remarriage in the case of the woman has, however, been constantly recognised by the Eastern Churches in certain circumstances, and their practice may have the support of a considerable antiquity. It may be said that from the middle of the fourth century the Church of the East definitely tends towards the laxer line in the matter of divorce and remarriage.

In one case, indeed, the woman might be divorced and remarry, and break no rule of the Church. The woman who was married to a non-Christian, and whose husband rejected her on her conversion to Christianity, would find the Christian Church on the whole agreed that she was free to remarry, "only in the Lord." Not being married by Christian marriage, she would not be regarded as bound by an indissoluble bond. The subject of such divorces will be considered in the next chapter. If the Apostolical Constitution before us has regard to these cases all difficulty falls.

A witness to the terrible laxity of the morals of marriage in the Churches of the East is S. Asterius, bishop of Amasea in Pontus (fl. 400 A.D.). He warns Christians, "who trade in wives, who change them as garments from time to time," "that marriages are severed by nothing save death and adultery."¹ Adultery then, in the view of S. Asterius, severs marriage, and presumably admits remarriage.

S. Asterius.

Adultery
severs
marriage.

Like S. Basil and S. Gregory Nazianzen, S. Asterius condemns the deplorable license of unchaste living, which many men among the Christians appear to have allowed themselves, not ashamed to take advantage of the unequal provisions of the secular law. In such condemnation he will not be understood

¹ S. Asterius, *Homily v.* on S. Matthew xix.

to include the case of a husband whose wife has committed adultery. S. Asterius says that with such a man he has all sympathy. "I will praise him who flees from the designing one, who has severed the bond by which he was bound to an asp or a viper."

S. Timothy
of
Alexandria

S. Timothy of Alexandria occupied the throne of that patriarchate from 381 A.D. to 385 A.D. He framed eighteen "canonical answers" to questions which had been submitted to him by his clergy, and these answers were subsequently incorporated into the Canon law of the East. The fifteenth of the questions dealt with puts the following case: "If a man's wife become mad, and that to the extent of having to be put in irons, and the husband say, 'I am not able to contain,' and desire to take another wife, ought he to take another or not?" S. Timothy's reply is most remarkable. "In this matter," he says, "adultery comes in; and I have nothing, and can find nothing, to reply concerning it." The answer may perhaps be read to mean that the patriarch would not suffer such remarriage for a moment; but perhaps a more probable explanation is that which understands an attitude similar to S. Basil's. He seems to say, "As far as I can judge, this remarriage is adultery; but public feeling is against me, and I will neither sanction nor condemn."

Enigma-
tical
judgment.

S. John
Chry-
sostom.

S. John Chrysostom—probably born in 347 A.D., the son of Secundus, who was a *magister militum* (στρατηλάτης), and as such one of the eight who commanded the imperial armies—represents a family of high distinction in the Empire. His father, however, died while the son was still an infant, and the early life of S. Chrysostom was passed under the loving care of his young widowed mother Anthusa, who devoted herself to her son's education. Perhaps the echoes of the outside world of dissolute Antioch hardly found their way within that holy home, whether in the earlier years spent in rhetorical study or in that later time when, yielding to the prayer of his mother that he should not make his home in a monastery, he chose instead to make a monastery of his home. In later years, indeed, during his troubled tenure of the chair of Constantinople, he can hardly have failed to have been brought face to face with

the painful realities of Christian laxity. However this may be, S. Chrysostom does not seem to have been troubled in the same way as S. Basil, S. Gregory Nazianzen, and S. Asterius, by the sense of the incompatibility of Christian teaching with the actual practice of the Christian communities. He is oppressed by no necessity of irregular concession to weakness; and, if anything, he rather errs on the side of strictness in representing the bond of marriage as a constraining bondage which Christians would do well to avoid by the maintenance of the celibate life. Thus, in his treatise *On Virginity* he says that "the husband, though he have a wife more intolerable than all besides, must needs be content with his bondage, and cannot find any release or escape from this arbitrary sway. . . . What can be more bitter than this bondage?"¹

No escape
from the
bondage of
marriage.

He understands in common with all other Christian teachers that a wife may be put away for *πορνεία*. In the *Homily against those who fasted with the Jews* he says, "If he have one who is a harlot (*πόρνην*) and adulteress (*μοιχαλίδα*) he is not forbidden to cast her out. For 'whosoever (saith He) shall put away his wife except for the cause of *πορνεία*, maketh her to commit adultery.' So that on account of *πορνεία* it is lawful to put away." It will be noticed that while the words *πόρνην* and *μοιχαλίδα* in this passage are distinguished, the sin of the *μοιχαλίσ* is understood to justify the putting her away, and is not less understood to do so for the reason that "on account of *πορνεία* it is lawful to put away." Though S. Chrysostom uses two words he appears to have the same sin in view. That sin, regarded from the point of view of its promiscuity, and of the *confusio prolis*, justifies the use of the word *πόρνη*; regarded as unfaithfulness it more naturally calls forth the word *μοιχαλίσ*.

A wife may
be put
away for
πορνεία,

While S. Chrysostom is thus clear that it is lawful to put away a wife for *πορνεία*, he nowhere uses language which can be fairly construed as permitting remarriage to persons so separated. On the other hand he repeatedly uses expressions of the strongest possible character as to the indissolubility of the marriage bond. "Let her remain unmarried or be reconciled to her husband.' . . . 'What then if he will never be

but re-
marriage
is not
permitted.

¹ S. Chrysostom, *De Virginitate*, § 28.

reconciled?' one may ask. Thou hast one more mode of release and deliverance. What is that? Await his death. For as the (consecrated) virgin may not marry because her Spouse liveth alway, and is immortal; so to her who hath been married it is then only lawful when her husband is dead." And farther on: "Seest thou the constraint, the inexorable bondage, the chain which compasses both parties?"¹

Remarriage after divorce had been permitted to the Jews lest worse should come. "If he had compelled the retaining one hated in the house, the husband in his hatred would have assassinated her; for such is the Jewish nation. . . . Wherefore he conceded the lesser ill, uprooting the greater."² Our Lord had restored the rule of marriage to a greater simplicity by precluding the putting away of a wife for any cause but fornication. This was permitted, "since [else] it had come round again to the same thing. For if he had commanded to keep her in the house, though defiling herself with many, He would have made the matter issue again in adultery." Here is the reason, the contemporary polyandry, a reason which does not necessarily affect the *vinculum*. As regards the character of the permitted putting away, it is to S. Chrysostom the antithesis of keeping her in the house, and so being guilty of connivance. There is no hint of the solution of the bond.

Our Lord restored the original law, giving us the strength of the Spirit to enable us to keep it. That law S. Chrysostom apparently understands to bar any divorce which would permit remarriage. "Whereas if He had willed (Adam) to put her away and introduce another, having made but one man, He would have formed many women. As it is, by the course both of His creation and of His legislation, He has shewn that one man must abide with one woman continually, and never break from her."³ And again, "Then having quoted the ancient law, authorized as it was both by words and deeds, and having recommended it to respect by the thoughts of the Giver; with authority, after that, He Himself too interprets and gives the law, saying, 'Wherefore they are no more twain, but one flesh.'⁴

¹ S. Chrysostom, *De Virginitate*, § 40.

³ *Ibid.* Hom. in S. Matt. 62.

² *Ibid.* Hom. in S. Matt. 17.

⁴ *Ibid.* Hom. in S. Matt. 62.

As therefore to mutilate the body is impious, so to divorce a wife is against all law." It will be observed that the premises here admit of no exception in the conclusion.

Proceeding to quote the much-disputed verse S. Matthew S. Matt
xix. 9. xix. 9, S. Chrysostom, in the printed editions, reads the clause *and shall marry another*; but although this clause would have considerably modified his argument if it implied the permission of remarriage after divorce for *πορνεία*, he entirely ignores it. Quoting the same verse in his *Homily on the Parable of the Unmerciful Servant*, he omits the clause, and reads *ποιεῖ αὐτὴν μοιχευθῆναι*. In all probability this was the text before S. Chrysostom, and the text as given in the Commentary may have been altered by a copyist. What is quite plain is that the verse suggested to S. Chrysostom no exception on which it was worth his while to comment. On the other hand, the comment he does make when he has occasion to explain the remark of the disciples, that "if the case of the man be so, it is not good to marry," is as follows: "For it did seem an intolerable burden to retain a wife full of all mischief, and to endure an unruly wild beast shut up constantly with you in the house." It may be concluded that S. Chrysostom had no thought of remarriage in any case.

In the Homily commonly known as *De Libello Repudii*, in The
confusion
resulting
from
remarriage
after
divorce. a continued argument he maintains S. Paul's teaching that "a wife is bound by the law as long as her husband liveth; but if her husband be dead, she is at liberty to be married to whom she will." He nowhere in this Homily specifies any exception to this rule. To the miserable confusion of remarriages after divorce he alludes in the following terms: "With what eyes will he behold the other's wife, now his own. Nay, rather, such an one cannot properly be called the wife either of the one or of the other. For the adulteress is no man's wife; for she hath trampled on her covenant with him, and unto thee she came without the due legal sanction." Bishop Cosin has argued from the words, "the adulteress is no man's wife," that in S. Chrysostom's estimate the bond of marriage with the first husband no longer existed. A perusal of the whole passage will shew how little there is to support

this contention. S. Chrysostom is simply emphasizing the terrible inconveniences of this kind of transgression.

A polluted wife not to be restored.

From the approval which S. Chrysostom gives to the rule of Deuteronomy, that "her former husband shall not be able to take her back after she is polluted," of which he says that it is "in entire harmony with Christ," it would seem that on the point of the restoration of the penitent wife he was more at one with the common feeling of his day than with the mercy of the earliest Christians. He is, however, very outspoken in his condemnation of the popular view that what was criminal in a woman was permissible in a man, thus following the protests of S. Basil and S. Gregory Nazianzen. In the *Homily on the passage*, "*to avoid fornication, let every man have his own wife*," he combats the popular view that the sin of a married man with an unmarried woman was not adultery. "Tell me not now of those laws from without, which drag adulterous women into a court of justice, and exact penalties from them, while they do not exact penalties in the case of men who, though having wives, corrupt themselves with harlots; but I will recite to thee the law of GOD, which is equally indignant with the woman and with the man, and calls the act adultery."

The sin of the man no less adultery than that of the woman.

Summary of the teaching of S. Chrysostom.

Summing up the teaching of S. Chrysostom, we find that he like other Christian teachers held that a husband might put away his wife for *πορνεία*; in *πορνεία* he seems to include post-nuptial unfaithfulness; he does not appear to admit remarriage in any case during the lifetime of the partner; he quotes with approval the Old Testament rule that a polluted wife was not to be received again by her husband; and as regards the meaning of S. Matthew xix. 9 he makes no reference to the clause, *and shall marry another*, as bearing upon the question of remarriage.

Conspicuous among the Eastern theologians of the fifth century was another bishop born and bred at Antioch, the learned and kindly Theodoret. It is not easy to state with confidence which side he took on the subject of remarriage after divorce for adultery. In the treatise known as *Græccarum Affectionum Curatio* he says: "The Creator of nature, inasmuch as in the very framing of man's nature He formed from the

Theodoret.

Testimony not consistent;

beginning one man and one woman only, forbids also the dissolving of marriage: and one only cause of dissolution has He allowed, that which indeed tears the bond in sunder (*διασπῶσαν τὴν ξεύγλην*),” and again, “but if she violate the laws of marriage and look towards another, then He commands to loose the bond (*λύειν τὴν ξεύγλην*).”¹ If Theodoret here uses the word *ξεύγλη* in the technical sense of ‘bond’ or ‘vinculum’ one familiar to later theology, these phrases mean that the persons passage favours re-marriage; divorced for fornication were at liberty to remarry. On the whole perhaps it is more probable than not that this was Theodoret’s view when writing this treatise.

At the same time there are other passages in Theodoret’s writings in which he appears to follow S. Chrysostom, and which do not readily fall in with the possibility of remarriage in any case during the lifetime of the partner. Commenting on S. Paul’s words, “Let her remain unmarried or be reconciled to her husband,” he says: “And he strives indeed to keep the bond of marriage unbroken (*ἀρράγῃ φυλάξαι τοῦ γάμου τὴν ξεύγλην*), but condescending to men’s weakness, he puts the person separately himself under a law of continency, in this way also forbidding the dissolution of marriage (*κωλύων τὴν τοῦ γάμου διαίρεσιν*). For by barring connexion with another he compels the party, whichever it be, to return to the former marriage.”² Here it would appear more probable that Theodoret did not admit of remarriage after divorce in any case. Again, following S. Chrysostom, he maintains that divorce is not recognised by the true law of marriage. “But S. Paul hearkened to his Lord’s teaching, which told him that Moses gave the law for the Jews’ hardness of heart, but that the law of nature had added no such provision. For one only man, saith He, and one only woman did God create, by the very mode of their formation laying down His law of marriage.”³ Here again divorce appears to be altogether excluded.

It would be no great matter for wonder if at a time when

¹ Theodoret, *Græcarum Affectionum Curatio*, Disp. iv.

² Theodoret, *Commentary on 1 Corinthians*, vii. 10, 11.

³ Theodoret, *Commentary on Romans*, vii.

the current Christian morality of the East was setting strongly in the direction of laxity, some of the teachers of the day were found expressing themselves at one time in the sense of the older strictness, and at another in that of the modern indulgence. Possibly this consideration may give the true key to Theodoret's utterances. He was as a teacher wanting in originality; and such teachers are seldom entirely consistent with themselves.

Before leaving Theodoret it may be noted that whatever his views about remarriage, the one cause which in his opinion justified putting away was adultery. He explains *παρεκτὸς λόγου πορνείας* thus: "if she violate the laws of marriage, and look towards another."⁴

Relaxation
of discipline
in the
East.

Re-
marriage
after
divorce for
adultery
an open
question.

The
stricter
standard
of the
West.

A review of the writings of S. Basil, S. Gregory Nazianzen, S. Asterius, S. Timothy of Alexandria, S. Chrysostom, and Theodoret has, in fact, afforded a review of the teaching and practice of the Eastern Churches during the fourth and fifth centuries. It is only too apparent that a general relaxation of the first strictness of the laws of marriage had found place. All the great teachers of the time are found protesting against this relaxation, not less S. Basil and S. Asterius than S. Gregory Nazianzen and S. Chrysostom. On one point, however, and that the point of most vital importance, there has ceased to be unanimity of opinion. Whether remarriage should or should not be admitted after divorce for adultery has become an open question. Some teachers condemn all such remarriage, some admit it under protest, some justify it. Meanwhile the actual life of Eastern Christendom seems to sweep on in a flood of little-restrained practice, made all too easy by the facilities of the secular law; and the teachers, as it were, stand by, striving as far as may be to reconcile consciences with facts, but little able to stem the stream which flows about them.

If we turn now to the great teachers of the West at this period, we shall find a markedly different atmosphere from that which had become prevalent in the East. Clear and definite in their conviction of the indissoluble character of the marriage bond, they are not even troubled to any great extent

⁴ Theodoret, *Graecarum Affectionum Curatio*, Disp. ix.

by practical difficulties. How would S. Basil and S. Gregory Nazianzen have rejoiced if they could have written of the Christians of Cappadocia as S. Augustine writes of the Christians of the West; the expression of an experience, be it remembered, which includes the churches of Italy as well as the churches of Africa. "Because," he says, "the manners of wicked Christians, very bad as ere now they have been, seem to have been free from this particular mischief, of men marrying other men's wives, or women other women's husbands; hence perchance in some churches it has come in of negligence unawares that the catechisms taught to the candidates for Baptism neither enquire of nor censure these faults. Whereupon they have begun even to be justified. Still, as yet they occur but rarely in baptized persons, if only we do not by our carelessness make them frequent."¹ Here we have a conventional morality among the Christians of the West, which, compared with the "ecclesiastical custom" of the Christians of the East, was as light compared with darkness. True, they had neither to do with the long-inherited dissoluteness of the Eastern cities, nor with the intrigues of the capital; but however protected they might be by circumstance, their high standard of moral life was at least their own accepted reading of the duties of Christian matrimony. The Roman secular law left them as free as their brethren of the East to sever the legal bond by the process of divorce, and to contract another, not less legal, in its place.

It is accordingly from the fourth century onwards that in the matter of the Christian theory of marriage the West, by holding firm the tradition of the first three centuries, is found out of harmony with the East. While the East diverged in the direction of laxity, taking up a position which it has since maintained, and of which it is not too much to say that at the present day it allows divorce for well-nigh "every cause," the West has, on the whole, consistently disallowed the possibility of the severance of the marriage *bond* for any reason short of the death of one of the partners.

We may notice the Western teachers of this period in the

¹ S. Augustine, *De Fide et Operibus*, §35.

following order: S. Ambrose, S. Chromatius, S. Jerome, S. Augustine, the African Canons, S. Innocent I., S. Hilary of Poitiers, Ambrosiaster.

S. Ambrose S. Ambrose, the great bishop of Milan at the close of the fourth century, in his Commentary on S. Luke xvi. 18, has much to say on the subject of matrimony. His views on the remarriage of converts, and on the sacramental character of marriage, are referred to in this volume in connection with those subjects. On the subject of divorce in the case of Christians he recalls our Lord's teaching that "he that putteth away his wife causeth her to commit adultery," and assigns the reason. "Because," he says, "it not being lawful for her in her husband's lifetime to contract a new marriage, sinful desire may gradually prevail against her." It was "not lawful" of course only by the Christian discipline. By the secular law it was lawful enough, and S. Ambrose accordingly goes on to say, "Suppose her to marry. The blame of the constraint she lay under is upon thee: and what thou accountest to be marriage is adultery." This is a little obscure, and may mean that the guilt of adultery attaches to the remarriage of the divorced wife, or to the remarriage of the divorcing husband. Whichever remarriage is referred to, it is, however, adultery, and the seeming of marriage cannot alter its character. "For what matters it whether thou commit that crime with open avowal of it, or as one who is an adulterer under the mask of a husband? Only that it is more grievous to have contrived a law to warrant crime than a secret perpetration of it." The concession of divorce is Jewish, not Christian. "'Moses permitted,' He saith, 'not God commanded'; but the law of God was from the beginning."¹

πορνεία
is adultery.

The passage quoted from the *De Abraham* lays down that "the same chastity is due on the husband's part as on the wife's," notwithstanding the laxity of the secular law. Husbands are to "avoid blending themselves with an adulterous body," and "not to give their wives such cause for separation." Husbands, then, might be put away by wives for such a cause, and, *a fortiori*, wives by their husbands. It will not be for-

¹ S. Ambrose, *Expositio Evangelica secundum Lucam*, lib. viii. § 2.

gotten that wherever it is allowed that the wife may put away a husband for *πορνεία*, there *πορνεία* must mean post-nuptial sin. To S. Ambrose therefore *πορνεία* at least includes adultery.¹

S. Chromatius of Aquileia (c. A.D. 350–407), adverting to the grave license of remarriage after divorce which the Manichæans permitted themselves, says, “Wherefore let those men be well aware what a heavy sentence of condemnation they incur in God’s sight, who for unbridled lust dismiss their wives without cause of fornication, and then seek to pass to another marriage. They believe that they do so with impunity, because it seems permitted by the laws of man and of the world: not knowing that hereby they aggravate their fault in that they prefer human laws to divine, in believing that lawful which God hath ordained to be unlawful, because it is freely allowed by man.” The antagonism of the Roman to the Christian law was thus very clear to S. Chromatius. He has no doubt that a wife may be put away for adultery. “But as it is impiety to put away a wife who is living in chastity and purity, so also it is permitted to put away an adulteress, because she hath made herself unfit for the society of a husband, who by sinning against her own body hath dared to profane the temple of God.”² S. Chromatius says nothing on the subject of remarriage.

In S. Jerome (A.D. 346–420) we have a teacher whose Biblical scholarship was unparalleled in his day, and whose criticism of the language of Scripture must always be of very high value. It is true that his fiery and undisciplined partisanship of everything he took in hand goes far to derogate from the trust which would otherwise be given to his more solid work, and different views are consequently held with respect to the importance to be attached to his various expressions of opinion, but, in the present matter it is well to remember that, however vigorously expressed, his principles are simply those of S. Ambrose and S. Augustine, as they are those of the first three centuries of Christianity.

¹ S. Ambrose, *De Abraham*, lib. i. § 25.

² S. Chromatius, *On the Sermon on the Mount*. Trac. x.

Case of
Fabiola.

It was the case of Fabiola which elicited S. Jerome's first pronouncement on the subject of divorce. This lady had put away her husband for vices "said to have been such that no harlot, no mean slave, could have endured them." S. Jerome is clear that so far she was justified; perhaps she was even bound to put her husband away. "Whatever is enjoined on husbands extends also virtually to wives. For in nowise can it be a duty to dismiss an adulterous wife, but to retain a husband who is an adulterer. 'If one be joined to a harlot it maketh one body,' therefore also she who companies with a fornicator and an impure person is made one body with him."¹

Wife at
liberty,
perhaps
bound, to
put away
adulterous
husband.

Antag-
onism of
Christian
and secular
laws.

Like all the other Christian teachers of his age S. Jerome has to emphasize the fact that the law of Christ is in the matter of marriage at issue with the law of the Empire. "The laws imperial are different from those of Christ; Papinian enjoins one thing, our Paul (not your lawyer of that name) another thing. With them husbands are unchecked in their impurity . . . with us what is forbidden to wives is equally forbidden to husbands."²

Re-
marriage
after
divorce
disallowed.

Fabiola, then, had been perfectly justified in putting her husband away, notwithstanding the inequality of the Roman practice. Fabiola, however, did not stop at putting her husband away, but married again. S. Jerome, who is writing a panegyric of the lady after her death, admits that this act was without any other real justification than Fabiola's ignorance of the "full force of the gospel." "Fabiola too, having persuaded herself, and thinking that she had lawfully put away her husband, and not knowing the full force of the Gospel, wherein every plea for wives marrying is cut away while their husbands live, in shrinking from the manifold wounds of the evil one, received unawares this one blow." He goes on to narrate how Fabiola herself, in her second widowhood, coming to understand what she had done more clearly, acknowledged the guilt and accepted the penance of adultery. "She put on sackcloth that she might publicly confess her error, and on Easter Eve in the sight of the whole city of

Fabiola's
penance.

¹ S. Jerome, *Epist.* lxxvii.

² *Ibid.*

Rome she stood in the ranks of the penitents in the Basilica which formerly belonged to Leteramus, who was beheaded by the imperial sword. Thus standing, while the bishop, the presbyters, and all the people wept in her company, she presented dishevelled hair, a wan face, unwashed hands, and a soiled neck. . . . She grieved in such sort as if she had committed adultery, and by much lavishing of remedies sought to heal that one wound."¹ Fabiola then did penance for her second marriage as for adultery, and her penance was received and welcomed by the whole Roman Church. At the same time the tone of the passage seems to imply that while Fabiola was right in her view of the second marriage as adulterous, the Church would not have demanded the penance of adultery from her unless she had voluntarily rendered it. The penitential practice in such cases is evidently hardly formed, notwithstanding the canons of Eliberis, and there would probably be a strong feeling that however immutable the principles involved, yet on a point where authority had not been very loudly heard, sin was at least less sinful in the insolence of its rebellious character, and ought therefore to be more tenderly dealt with.

The panegyric does not appear to have been written till 399 A.D.; but the divorce, the remarriage, and the penance of Fabiola must all have occurred before S. Jerome's last visit to Rome, in which he appears to have made Fabiola's acquaintance. This visit occurred in 382 A.D. Keble notices that if the rule of penance for adultery was followed which had been laid down by the Council of Eliberis in the beginning of the century, the penance itself would last five years. It may, however, be fairly doubted whether Fabiola would feel bound to remain among the penitents for the whole of this term; and, as we have noticed, it does not appear probable that the Roman Church would have required it. The account quoted above seems rather to imply the performance once for all of one great striking act of public penance.

It was in 384, some few years therefore after Fabiola's experience, that S. Jerome addressed a letter to Amandus, a ^{To} ~~Amandus.~~

¹ S. Jerome, *Epist.* lxxvii.

A woman
remarried
is to
separate.

priest of Bordeaux, in reply to certain questions. Amandus had asked the question "whether a wife who has left her husband for adultery and unnatural crime, and has had another forcibly imposed upon her, may without penance communicate with the Church during the lifetime of him whom she had before left." The case was not a mere suppositious case of conscience, but one which had actually occurred, and the question had been suggested by the lady herself. S. Jerome's answer is not wanting in clearness. "Reply accordingly to the sister who enquires of me concerning her status with the decision which is not mine but the apostle's: 'Know ye not brethren' and in another place, 'The wife is bound by the law so long as her husband liveth. But if her husband is dead, she is freed: let her marry whom she will, only in the Lord.' The apostle, you see, cutting away all excuses, has most plainly decided that in the lifetime of the husband the wife is an adulteress, if she have married another. I am indifferent, though you bring forward to me the ravisher's violence, the mother's persuasion, the father's authority, the throng of kinsfolk, the tricks and the insolence of the slaves, or the losses of the family estate. As long as the husband lives, though he be an adulterer, or stained with unnatural sin, or overwhelmed with all vices, and have been deserted by his wife by reason of these iniquities, he is still accounted her husband, nor may she take another husband."¹

The practical conclusion S. Jerome comes to is as follows: "Therefore in the case of this sister also, who, as she says, suffered violence in being united to another, if she wish to receive the Body of Christ, and not to be accounted an adulteress, let her do penance; with this understanding, however, that she do not cohabit with the second husband, whose title is not husband but adulterer, from the time of her penance."

A woman
after re-
marriage
may not
return to
her first
husband.

In connexion with this case it is worth while to notice that S. Jerome does not consider it open to a woman who has thus been remarried after divorce to return to her first and true husband. He bases this opinion on Deuteronomy xxiv., and

¹ S. Jerome, *Epist.* lv. c. 3.

in accepting it seems, like S. Chrysostom, somewhat to forsake the mercy of the earliest Christian ages.

In 393 S. Jerome wrote his books in controversy with To Jovinian. Jovinian. Commenting on S. Paul's instruction in 1 Corinthians vii. 10 he writes: "For he teaches that the wife, in accordance with the decision of the Lord, is not to be put away except for the cause of fornication; and that she who is put away ought either to abstain from marrying another during the lifetime of her husband, or indeed be reconciled to her husband." S. Jerome thus, like S. Augustine afterwards, pieces together the teaching of our Lord, and that of S. Paul, with the result that the remarriage of a divorced wife is in all cases inadmissible so long as the partner lives.¹ Re-marriage in all cases inadmissible.

The Commentaries on the Minor Prophets were produced at intervals from 391 A.D. to 406 A.D. In the Commentary on Malachi he adduces our Lord's teaching, that it is unlawful to put away a wife except for the cause of fornication.² Commentary on Malachi.

The commentary on S. Matthew was partly written in 397 A.D., and was finished in great haste on S. Jerome's recovery from an illness in the Lent of 398 A.D. Commenting on the Sermon on the Mount he says that "Moses enjoined the bill of divorce to be given because of the hardness of the husbands' hearts, not granting divorce, but doing away with homicide." Farther on, in the notes on S. Matthew xix., he says that our Lord in disallowing the Mosaic license "had not promulgated any sentence of his own, but had only called to mind an ancient history and certain commands of God." Commentary on S. Matthew.

The disputed verse, S. Matt. xix. 9, is given in the printed editions of S. Jerome in the ordinary reading of the Vulgate: S. Matt. xix. 9. "*Dico autem vobis, quia quicumque dimiserit uxorem suam, nisi ob fornicationem, et aliam duxerit, moechatur. Et qui dimissam duxerit, moechatur.*" This may have been the reading used by S. Jerome, but if so it is certainly remarkable that, unlike S. Augustine, he has not a word of explanation to offer on the apparent permission of remarriage in the case of divorce for fornication. The possibility of such remarriage being permitted never even occurs to him. In fact he reads the text quite the

¹ S. Jerome, *Ad Jovinianum*, lib. i. c. 10. ² *Ibid.* In *Malachiam*, ii. 14.

other way. "And because it might happen that one brought a false charge against the innocent, and with a view to a second matrimonial connection might inflict a reproach on the former one, he is directed so to dismiss his wife, as not to have another while his first is alive." Similarly of the woman, "because it might happen that the wife for her part should by the same law give a bill of divorce to her husband, the same cautionary precept is given that she may not take another man."¹ Remarriage then, during the lifetime of the partner, is absolutely and in all cases forbidden.

A man is bound to put away his wife for adultery,

as also "suspicion of fornication."

While, however, there may be no remarriage, a man may put away his wife for fornication, and indeed is bound to do so, "lest she bring the man also under a curse, since the Scripture saith, 'He who retaineth an adulteress is foolish and impious.'" By fornication he understands post-nuptial adultery; it occurs "when she hath distributed of that one flesh to another, and hath separated herself from her husband by fornication" (*cum illa unam carnem in aliam divisit, et se fornicatione separaverit a marito*).² In saying that a man is free to put away his wife not only when there is fornication, but when there is "suspicion of fornication," S. Jerome seems to give to our Lord's words a dangerous extension. There are, however, no other admissible grounds of putting away except fornication, or the suspicion of it. "What if she be a drunkard, passionate, profligate, luxurious, greedy, a gadder about, quarrelsome, evil-tongued; must such an one be retained? Whether we will or no; she must be borne."³

Summary of S. Jerome's views.

S. Jerome then holds that a man may, and indeed ought to, put away his wife for fornication, understanding by fornication adultery after marriage. A wife is equally justified in putting away an adulterous husband, and perhaps ought to put him away. In all cases remarriage during the lifetime of the partner is inadmissible. Yet a wife once put away ought not to be restored. The verse (S. Matt. xix. 9), whatever the reading before S. Jerome may have been, conveyed to him no sanction of remarriage.

S. Hilary of Poitiers (died 368 A.D.), commenting on the

¹ S. Jerome, *Commentary on S. Matt. xix.*

² *Ibid.*

³ *Ibid.*

fifth chapter of S. Matthew, says that our Lord added many points to the law, but took nothing from it. "For whereas the law had conceded the liberty of effecting divorce by the authority of instruments, now the Evangelical Faith hath not only enjoined upon the husband the desire for concord, but has judged him guilty of compelling his wife to adultery, if she is married anew to another through the stress of his desertion; prescribing no other ground for ceasing from wedded life (*desinendi a conjugio*) than the defilement of a husband by the society of a prostituted wife."¹

S. Hilary
of Poitiers

Adultery
the only
admitted
ground of
putting
away.

There is no reason to suppose that S. Hilary would have admitted remarriage, any more than the other great doctors of the West.

We come now to the greatest doctor of the West, to S. Augustine. The views of this great theologian on the subject of marriage are to be found scattered over many treatises, and the numerous extracts which are given above will leave no doubt as to what his views were, or as to the degree of precision with which he held them. It is perhaps desirable to read them all through with some rapidity, and so to obtain the general standpoint, before pausing to consider them in detail. Much has been made in this controversy of a single passage in the tract *De Fide et Operibus*,² in which S. Augustine says: "Whosoever hath put away a wife taken in adultery, and married another, does not seem as if he ought to be on the same footing with those who divorce and remarry for some other cause than adultery. And in the dictates of God Himself it is so obscure whether he who unquestionably may dismiss an adulteress is yet to be judged an adulterer if he marry another that, as far as I can judge, one may pardonably err on that point." Will it be credited that this well-worn quotation has no reference to Christian matrimony at all? The whole passage refers to Catechumens, who are candidates for Baptism, and who are not yet members of the Body of Christ. The subject of the remarriage of converts, and of

S.
Augustine.

The
passage
in the "De
Fide et
Operibus"

has no
reference
to the
marriage
of the
baptized.

¹ S. Hilary, *Commentary on S. Matthew*, c. iv. § 22.

² S. Augustine, *De Fide et Operibus*, c. 19 (Migne's Ed. tom. vi. p. 221).

See *post*.

the relations of Christian marriage to non-Christian marriage, will be treated at length elsewhere; and it is sufficient here to notice that what is remarkable about S. Augustine's attitude in the passage now under notice is not that he admits to Baptism those who, prior to Baptism, have put away their wives on the ground of adultery, and married again, but that he should consider that their case has in it any great element of difficulty. The overwhelming consensus of the Church, as we shall see elsewhere, has gone to recognize in the non-Christian world the same liberty as to divorce and to polygamy which the Mosaic code permitted to the Israelites, and not to recognize outside Christianity the existence of the sacramental bond which in members of the Body of Christ makes the marriage indissoluble. The difficulty which S. Augustine experienced in accepting this view springs doubtless from a cause not difficult to assign. The candidates for Baptism in S. Augustine's day had probably in a majority of instances been born either of Christian parents or, like S. Augustine himself, of parentage partly Christian, and had been more or less brought up as Christians so far as concerned the teaching of Christian theological tenets and Christian moral precepts. They were in fact Christians by profession. But by a baneful abuse of that day the very loftiness of the estimate in which Baptism was held as the laver of regeneration led men and women, but especially men, to defer their Baptism till the maturity of life, so that the waywardness of youth, and the impulses of early passion, might be covered and left behind in the one Baptism for the remission of sins. Consequently in the cases of the Catechumens with whom S. Augustine had to deal, the lives which they had led before Baptism presented a twofold aspect. On the one hand they had been the lives of professing Christians, on the other they had been the lives of those who were not Christians in fact. On the one hand it might seem intolerable that those who professed the Christian name should be permitted with impunity to claim the full license of heathen indulgence; on the other it would certainly be hard that those who had never yet been members of Christ, and whose bodies were not temples of the Holy Ghost, should

be held bound by that sacramental bond of Holy Matrimony which was, in S. Augustine's view, in all cases indissoluble. And so there is a certain hesitancy as to allowing or forbidding Catechumens to retain in Christian wedlock the wives whom outside Baptism they had married under the secular laws, after divorcing their first wives on the ground of adultery.

For the purpose of the present chapter, which is concerned with the question whether divorce and remarriage are open to the baptized, it is clear that the views of S. Augustine with regard to Catechumens have no place in the enquiry. Having thus cleared the ground we may now refer to the other teaching of S. Augustine.

Commenting on the Sermon on the Mount he understands that "it is possible for" the husband "to put away his wife for the cause of fornication, which the Lord willed to be an exception."¹ "He does not make it compulsory to dismiss if there be such cause; He only permits."² Again, "there would be no harm in the husband's being reconciled to that woman unto whom the Lord said . . . *Go, and see that thou sin no more.*"³ Similarly the wife may put away for fornication; "if then the rule is alike, we must understand that the wife may not put away except for fornication; as neither may the husband."⁴ But neither the husband nor the wife who has thus put away a partner is at liberty to remarry; "neither the wife may marry in the lifetime of the husband from whom she has withdrawn herself, nor the husband take another wife in the lifetime of her whom he hath put away."⁵ S. Augustine's repeated statement of his view that the wife may put away for fornication as well as the husband proves clearly that he regarded *πορνεία* as at least inclusive of post-nuptial sin. S. Augustine arrives at his decision against remarriage by connecting S. Paul's teaching with our Lord's. S. Paul ordains "that the wife depart not from the husband, but an if she depart that she remain unmarried, or be reconciled to her husband." S. Augustine presumes that if she depart it will be for the cause of fornication held sufficient by our Lord.⁶

The
"Sermon
on the
Mount."

Husband
may, but
need not,
put away
for forni-
cation.

The
penitent
may be
restored.

Wife may
put away
for forni-
cation.

Re-
marriage
disallowed.

πορνεία
at least
includes
adultery.

¹ S. Augustine, *De Sermonibus Domini in Monte*, lib. i. § 39.

² *Ibid.* lib. i. § 43. ³ *Ibid.* ⁴ *Ibid.* ⁵ *Ibid.* ⁶ *Ibid.* lib. i. § 39.

Spiritual
fornication
a ground of
separation.

To the term "fornication" S. Augustine, however, proceeds to assign a latitude of signification which he afterwards withdrew. Arguing that unbelief is fornication, that idolatry is unbelief, and that covetousness is idolatry, he concludes that covetousness is fornication; and so generally he remarks, "From this it is apparent that a man may without fault dismiss his wife, and a wife her husband, on the ground of unlawful desires, not only those which are committed in lustful intercourse with the husbands and wives of others, but any soever which make a soul in abusing the body to err from the law of God, and to be perniciously and shamefully corrupted. For the Lord excepts the case of fornication, and this fornication, as was considered above, we are bound to understand in a general and universal sense."¹

Divorced
wife must
remain
unmarried
or be
reconciled.

He experiences a difficulty as to the case of the woman who is put away, because our Lord, while characterising her second partner as guilty of adultery, does not emphatically include the woman herself in the same condemnation. "On the other hand, it is much harder to make out, when a man and a woman are connected with mutual consent, one of them should be in adultery and not the other. Besides, if the man be in adultery by marrying one put away from her husband, though she did not dismiss him, but was dismissed, she for her part causeth him to commit adultery, which is equally forbidden by our Lord." He therefore sees his way to a definite conclusion—"The inference from all this is, that, whether dismissed or dismissing, she ought to remain unmarried, or be reconciled to her husband."²

The
"Retracta-
tions."

The *Exposition of the Sermon on the Mount*, from which these passages are taken, was written by S. Augustine when as yet but a priest at Hippo, somewhere about 394 A.D. It might be suspected therefore that the work would shew something of youthful certainty, which age, experience, and the responsibility of the episcopate would tend to modify in after years. It is very satisfactory to be able to bring S. Augustine's views to the test of this maturer experience by means of the *Retractations*, a treatise in which he re-treated all the previous labours of his

¹ S. Augustine, *De Sermone Domini in Monte*, lib. i. § 46. ² *Ibid.* lib. i. § 48.

life, confirming generally, but occasionally correcting. The date of this work must probably be placed some thirty years after the date of the *Exposition of the Sermon on the Mount*. Reviewing this *Exposition* he expresses his sense of the great difficulty of the subject, and his preference that his readers should not regard his views as final, but rather compare them with those of others. "Nor do I wish that, in a matter so great and so hard to determine, the reader should imagine that he ought to content himself with that discourse of mine; but let him read other sayings also, whether of mine subsequently written, or of others better considered and discussed; or, if he can, let him for himself, with a more alert and searching spirit, examine the points which may well affect a man's judgment thereon."¹ But, while thus disclaiming any desire to dogmatise unduly, he holds by all his former views with two exceptions only. The first of these is as to the meaning of that fornication for which a husband or a wife might put away. Did it, or did it not, include spiritual fornication (as idolatry), as well as the fornication of "unlawful embraces"? It is clear, on the one hand, that all sin is not fornication in the sense which would justify putting away; it is clear, on the other, that unlawful embraces do justify putting away. Whether between these points there is a spiritual fornication which justifies putting away seems to S. Augustine in his maturer years a question which is at least arguable—"But how far this fornication is understood to reach, and where its limit is to be drawn, is a most intricate enquiry."²

Doubt expressed as to whether spiritual fornication is a ground for putting away.

There was a second point on which he corrected his earlier teaching. He had said of the putting away of an adulterous wife, "This is permitted, not commanded." Recollecting the passage, "He who retaineth an adulteress is foolish and impious,"³ he revokes this teaching, and now teaches that a man is bound to put away an adulteress so long as she continues to be an adulteress. But he is positive that the door of return must be left open to the penitent: "By no means, however, could I allow that the woman (in the Gospel) was

Husband bound to put away wife so long as adultery continues.

¹ S. Augustine, *Retractationes*, lib. i. c. 19, § 6. (Migne's Ed. tom. i. p. 616.)

² *Ibid.*

³ Proverbs xviii. 22, in the Vulgate: *Qui tenet adulteram stultus et impius est.*

to be accounted an adulteress even after our Lord had said unto her, 'Neither will I condemn thee : go, and sin no more,' if she heard His saying obediently." ¹

This door of forgiveness, open to the penitent, is fully consistent with the views formerly expressed on the subject of remarriage, which he sees no occasion to modify. The *Retractations* leave S. Augustine on this subject where he was thirty years before. In no case may either husband or wife marry again during the lifetime of the other.

Reply to
Faustus.
A para-
phrase.

In S. Augustine's *Reply to Faustus*, the Manichæan, he quotes our Lord's teaching on this subject in the form of a paraphrase, which is of interest as illustrating the question of the true reading of S. Matthew xix. 9. "It hath been said, Whosoever will put away his wife, let him give her a bill of divorce ; but I say, Whosoever shall put away his wife (excepting the cause of fornication) will both cause her to commit adultery, and will be himself an adulterer, should he afterwards marry another."² The first part of this somewhat free quotation appears to be from S. Matthew v. 32, while the second part is from S. Mark x. 11, or from S. Luke xvi. 18. The text of S. Matthew xix. 9, as we have it in the *Textus Receptus*, may well have been constructed in exactly the same way, but by a scribe who, in declining to paraphrase the words of the passages of Holy Scripture which he united, has introduced a fatal confusion of meaning which S. Augustine is here most careful to avoid.

Comments
on S. Matt.
xix 9.

While on this subject, it may be as well to refer to S. Augustine's comments on S. Matthew xix. 9 in his treatise *De Conjugiis Adulterinis*. It is apparent from those comments that the version of S. Matthew which was before S. Augustine represented the present received text, containing the phrase *and shall marry another*. S. Augustine thus expresses the difficulty of this reading: "If it be understood in the sense that 'he who putteth away for fornication, and then marrieth, doth not commit adultery,' it (our Lord's statement) apparently makes a difference in this case between the rule for the husband and that for the wife, seeing that the wife departing from the

³ S. Augustine, *Retractationes*, lib. i. c. 19, 6.

⁴ S. Augustine, *Contra Faustum*, lib. xix. c. 3.

husband, though it be for fornication, and marrying another, commits adultery, while the husband, if for the same cause he dismiss the wife, and remarry, doth not so. But if the rule is the same for both, in both it is adultery to unite one's self to another, even when the separation was for uncleanness."¹ He then proceeds to quote S. Paul to prove that the rule for the husband is the same as that for the wife.

In the treatise *De Bono Conjugali*, published about 401 A.D. —the fifth or sixth year of S. Augustine's episcopate—he reiterates his views on remarriage after divorce with entire definiteness. "The mutual consent (*confederationem*) made in marriage God's Scripture doth so commend as that neither one dismissed by her husband may marry another so long as her husband liveth; nor may he that is dismissed by his wife marry another until she be dead who departed from him."² In another place in the same treatise he makes the same statement while referring the indissolubility to the sacramental character of the Christian marriage bond. "To such a degree does that marriage covenant once contracted become, as it were, a sacramental thing, that even by separation it is not voided; since as long as the husband liveth, although the wife be forsaken by him, she is an adulteress if she marry another man, and he who left her is the cause of this evil."³ He here confesses a "difficult complication" (*difficilem nodum*) on the subject of the remarriage of the innocent husband, but again sums up against it on the ground of the equality of husband and wife in their mutual relations. "But on what principle the husband should have license to marry another upon leaving the unfaithful wife, while the wife has not license to be married to another upon leaving an adulterous husband, I see not."⁴ This "exceeding tenacity of the marriage bond" was, however, far from being accepted by S. Augustine without notice because it was part of the Christian tradition: "Who would not be set on musing" by it? "I by no means think that it could have had so much force except from its being applied as a sort of sacrament of some greater thing." Outside Christianity there

The "De
Bono
Conjugali."

No re-
marriage
after
divorce,

¹ S. Augustine, *De Conjugiis Adulterinis*, lib. i. c. 8.

² *Ibid.* *De Bono Conjugali*, c. 3.

³ *Ibid.* c. 7.

⁴ *Ibid.*

but this
strictness
is peculiar
to
Christians.

was no such strict obligation: "The case is not so with a wife except in the city of our God, in His holy mountain."¹ Other passages in the same treatise affirm no less definitely that all remarriage of divorced persons is unlawful during the lifetime of the partner. It is equally clear that this law applies only to Christians, and that, speaking generally, non-Christian marriage has no pretensions to the indissoluble character. In this aspect the statements will be examined in another chapter.

The
penitent
adulteress
may
return.

S. Augustine in this treatise, as elsewhere, keeps open the door of return to the penitent adulteress. "But if she repent her of her wickedness, and, returning to the chastity of wedlock, she rescind her adulterous agreements and purposes, I shall be astonished if even the adulterer himself hold her to be a breaker of her faith."²

Sermon 392.

Passing on to the Sermon numbered 392 in the collection of S. Augustine's works, a Sermon preached to the people of Hippo after he had been bishop for several years, S. Augustine repeats his views as to the indissolubility of the marriage bond in the case of Christians, with no less definiteness than before.

Marriage
indissoluble

"You must not have wives whose former husbands are living; nor may you, women, have husbands whose former wives are living. Such marriages are adulterous, not by the law of the courts, but by the law of Heaven. Nor may a woman who by divorce has withdrawn from her husband become your wife while her husband lives. Only because of fornication may one dismiss an adulterous wife; but in her lifetime you may not marry another. Neither to you, O women, is it granted to find husbands in those men whose wives have quitted them by divorce: such are adulteries, not marriages."³

Inequality
of husband
and wife
rejected.

In common with other Christian doctors, S. Augustine finds nothing to commend in the tendency of certain Christians to accept the current Roman views as to the inequality of husband and wife. "Who would endure an adulterous wife? Yet the woman is bidden to endure an adulterous husband. What justice! Why, I ask thee?"

In the *Epistle on the Blessing of Widowhood*, written perhaps

¹ S. Augustine, *De Bono Conjugali*, c. 7.

² *Ibid.* c. 4.

³ *Ibid.* Sermon 392, c. 2 [Migne's Ed. tom. v. p. 1710].

in 414 A.D., S. Augustine speaks of the "Sacrament of Marriage indissoluble as long as both are living,"¹ connecting the indissolubility with the sacramental character of Christian marriage.

The "De Bono Viduitatis."

Sacramental indissolubility.

In 419 A.D. the great doctor wrote the treatise *De Nuptiis et Concupiscentia*. In this, speaking of "a certain Sacrament of Marriage," he says that "the inward part of this sacrament doubtless is, that male and female once joined in marriage should persevere inseparably as long as they live, and that it should not be lawful, except on account of fornication, for the one to be severed from the other."² And speaking of those who remarry after divorce, he says, "By the law of the Gospel such an one is guilty of adultery; as is the woman too if she be married to another. So absolutely do the mutual rights of wedlock once acquired continue during the parties' lifetime, that even the separated (on whichever side the separation take place) are more truly man and wife together than they are with those others to whom they have joined themselves. For they would not be in adultery with others, unless they continued husbands and wives (as the case might be) to one another."³

The "De Nuptiis et Concupiscentia."

Indissolubility of Christian marriage.

The force of this argument is in nowise diminished since S. Augustine's time, and it may fairly be believed that the firm attitude of the logical West is in no slight measure due to it. There may be difficulty in the passage S. Matthew xix. 9. There is, unhappily, no doubt about the diversity of practice between East and West from the fourth century onwards; but when all is said, the human mind cannot admit contradictories in the same finite subject-matter. If one of the partners in a second marriage is by that partnership guilty of adultery, then the former bond of marriage must still exist; and if the bond of that marriage still exist, then it is adultery if the other partner to it remarry. One cannot be free and the other bound.

Argument for continuance of bond from the admitted adultery of one partner.

In the same year, 419 A.D., S. Augustine wrote the two books *De Conjugiis Adulterinis*, addressed to Pollentius, who,

¹ S. Augustine, *De Bono Viduitatis*, c. 4 [Migne's Ed. tom. vi. p. 433].

² *Ibid.* *De Nuptiis et Concupiscentia*, lib. i. c. 11 [Migne's Ed. tom. x. p. 420].

³ *Ibid.*

The "De
Conjugiis
Adulter-
inis."

An
adulteress
may not
remarry.

notwithstanding the decision of the Council of Carthage in 407 A.D., saw fit to re-open the subject of remarriage after divorce. Pollentius asked whether S. Paul's instruction in 1 Cor. vii. 10, that a woman who departed from her husband was to remain unmarried, could be held to include the case of the woman who had put away her husband for adultery. S. Augustine argues in reply, that inasmuch as the woman might only depart at all in the case of adultery, it must be in this case that she was, though separated, to remain unmarried. It will be remembered that this is the old argument of the *Exposition of the Sermon on the Mount*, written a quarter of a century before. S. Augustine clearly stood exactly where he had always stood in the matter. Remarriage after divorce is entirely forbidden to Christians, till the death of one or the other sets the remaining partner free.

The
argument
of
Pollentius
that
adultery
dissolves
marriage
ipso facto.

Pollentius used the argument which has been so widely used by some of late years that adultery was equivalent to death, dissolving a marriage *ipso facto*; the argument to which, in truth, the defenders of remarriage after divorce are logically driven. S. Augustine's reply is noteworthy: "See how absurd this is, that he is not an adulterer, because he has married an adulteress. Nay, what is more monstrous still, neither will the woman herself be an adulteress; since to the second husband she will not be the wife of another, but his own. For the marriage bond having been dissolved by the former adultery, whomsoever she shall now have married, he too having no wife, she will not be an adulteress with an adulterer, but rather a wife with a husband."

Penitent
to be
restored.

S. Augustine repeats his opinion that the penitent sinner ought to be received again; the husband "has no right now to call her an adulteress, whose crime, she being penitent, he believes to be blotted out by God's mercy."

Arguments
of
Pollentius
from incon-
venience.

He deals with various objections from inconvenience brought forward by Pollentius against the indissolubility of marriage; that a husband unable to marry again would be led to seek the death of the adulterous wife; that a husband entering upon a second marriage after divorcing his wife for adultery would not be admitted to penance while the adulterous wife lived, whereas

if he procured his wife's death, penance would be open to him. S. Augustine replies that the adulteress after all is only one case of difficulty. There are difficulties no less real in the cases of the physically incapable, the dowerless, the barren, the deformed. Is the husband in these cases to be allowed to marry again, because he is not without inducement to seek the death of his wife?

Nor, argues S. Augustine, would the permission to remarry be without grave inconveniences. He foresees that hateful possibility of the connivance of the husband with which the experience of the last thirty-five years has made Englishmen so terribly familiar. "Thinkest thou not that there is need of caution lest certain husbands, for one cause or another not able to endure their wives, should learn ways of making them commit adultery, that the bond of marriage between them being dissolved, as thou thinkest, by fornication, they may be free to marry others?"

Possibility
of the con-
nivance
of the
husband in
the wife's
adultery.

If we now sum up the opinions of S. Augustine, they are these. Both the husband and the wife may put away for fornication, which is therefore inclusive, at any rate, of post-nuptial sin. In his later years he held that the husband not only might, but was bound to, put away the wife for adultery, so long as she remained an adulteress. He was throughout of opinion that the sinning partner should be received by the other upon repentance. He inclined in his earlier years, but less certainly in after life, to think that the fornication which justified putting away should be held to include modes of spiritual fornication, as idolatry. Whatsoever the ground of severance, he is uniformly of opinion that Christian marriage is indissoluble by reason of its sacramental character. There can be no remarriage of a separated partner during the lifetime of the other. He is not blind to difficulties of interpretation; but the conclusion is invariably the same. He knows the passage S. Matthew xix. 9 in the difficult form in which we have it in the received text. He rejects the marriage of the innocent husband, which some deduce from the text, on the ground of its logical incompatibility with the rest of the teaching.

Summary
of S.
Augustine's
teaching.

S. Augustine's teaching on the subject of marriage outside Christianity will be treated in the chapter on the remarriage of converts. As regards the remarriage after divorce of baptized Christians, with which alone this chapter is concerned, S. Augustine has throughout the long years of his teaching no contrariant conclusion. There can be no such remarriage.

The
African
Code.

Re-
marriage
after
divorce dis-
allowed.

An important canon of the African Church of this period is that numbered 102 in the African Code. It is wrongly included by the Pseudo-Isidore among the canons of Milevis, and appears to be really the 8th canon of the 11th Synod of Carthage held in 407 A.D. It is doubtless in accord with the general feeling of the African churches. "It was resolved that according to the evangelical and apostolical discipline neither a man put away by his wife, nor a woman put away by her husband, be united to any other, but that they so abide or be reconciled to one another. If, however, they contemptuously disregard this, they are to be brought to penance." The canon closes with this most significant addition: "in which matter application must be made for the promulgation of an imperial law."

An
imperial
law desi-
derated.

Nothing could shew more markedly the extraordinary difference of sentiment in this matter between the churches of the East and the churches of Africa. In the East the great doctors felt themselves overborne, and were surrendering. In Africa the Church was not only of one mind as to the indissolubility of Christian marriage, but was strong enough to feel impatience that the secular legislation did not support the Christian view, and to make representations that an imperial law based upon that view was urgently called for. It need hardly be said that neither then nor at any later period did the secular code of the Empire abolish the right of remarriage after divorce. But that the African churches should ask for such legislation tells its own tale of their unanimity and definiteness in the matter.

S. Innocent I. occupied the Roman See from 402 A.D. to 417 A.D. Extracts from three of his letters are given above.

S. Innocent
I.

The first of these is a letter addressed to S. Victricius, Bishop of Rouen in the year 404 A.D. In reply to a request

for information as to the practice and discipline of the Roman Church, S. Innocent in this letter supplies fourteen rules, of which he says that they are not new, but derived by tradition from the apostles and fathers. The thirteenth of these rules lays down that consecrated virgins, if they marry, are not to be admitted even to penance before the death of the husband, and use is made of the following argument: "For if this rule is universally observed, that whosoever during the lifetime of her husband shall have married another is accounted an adulteress, and permission to do penance is not accorded to her, unless one or other of them (the husbands) be dead: how much more ought it to be observed of her, who had in former time united herself to an Immortal Spouse, and has since passed over to human nuptials." The rule referred to, then, was universally observed at Rome in 404 A.D., nor does it appear that any exception was admitted in cases of divorce on the ground of adultery. It is interesting to recall that the case of Fabiola, only some twenty years before, shews that it was then possible for a Christian lady at Rome to enter into a second marriage after divorcing her husband, in ignorance that "the full force of the Gospel" would not permit such a marriage: and that she does not seem to have been called to account for it by any external authority. Her edifying penance had probably no slight influence in bringing about that universal observance of the Roman Church which S. Innocent alludes to as established in 404 A.D. Fabiola's penance had taken place after the death of the second husband: and perhaps the most curious feature of the rule "universally observed" in 404 A.D., is that no similar offender was to be admitted even to penance till after the death of the second husband. Why separation of life should not have been regarded as at least as good evidence of penitence does not appear. Possibly the rule had rather regard to the practical difficulties arising from a second repudiation.

The next two extracts are taken from a letter addressed to Exsuperius, Bishop of Toulouse, in reply to certain questions which had been referred by him to S. Innocent. The fourth section deals with the question, "Why men who are communi-

Letter to
Victricius.

Re-
marriage
of women
after
divorce
universally
accounted
adultery.

S.
Innocent
to
Exsu-
perius.

The
treatment
of the
adulterous
husband.

cants do not consort with wives guilty of adultery, while, on the other hand, wives are seen to remain in the fellowship of adulterous husbands?" The difficulty which seems to have troubled Exsuperius is that in the practice of the Christians of Gaul a husband was held bound to put away an adulterous wife, while a wife was not held bound to put away an adulterous husband. This distinction was in fact, as has been seen, very generally observed throughout the Christian Church. Probably Exsuperius was not altogether satisfied that a wife who retained an adulterous husband was not guilty of connivance of adultery. S. Leo, however, understood the question in a different sense. He thought it had to do with the unequal treatment of the guilty parties by the Church, as adulteresses were more frequently the objects of Church penalties than adulterers. He replies that "the Christian religion condemns adultery equally in either sex," but that the sin of a man was less generally matter of notoriety, and that it was not practicable to excommunicate people on suspicion.

Re-
marriage
"on both
sides" is
adultery

Exsuperius had also enquired "touching those, who, divorce intervening, have connected themselves with another in marriage." S. Innocent replies, "That these on both sides are adulterers, is evident." "All such are to be severed from the communion of the faithful." The custom "universally observed" in 404 A.D. is thus in 405 A.D. authoritatively affirmed by the Roman pontiff, so far as concerns the exclusion of the offender from the communion of the Church. S. Innocent's letter to Exsuperius was written only two years before the Synod of Carthage (407 A.D.), whose canon in the same sense has already been noticed. Thus at the beginning of the fifth century the Roman and African churches were alike unhesitating in their assertion of the indissolubility of Christian marriage.

S.
Innocent
to Probus.

The Epistle of S. Innocent to Probus is of singular interest, as giving the record of what appears to have been one of the earliest cases, if not the very earliest case, of the exercise of a jurisdiction accorded to bishops by the secular law. A constitution of Arcadius and Honorius in A.D. 399 had allowed the parties in civil suits to go before the bishop as arbitrator. The

letter to Probus was written some time after the barbarian invasion under Alaric (410 A.D.). In the course of that invasion a certain Ursa, the wife of one Fortunius, had been taken captive by the barbarians. Fortunius in her absence married another wife, named Restituta. Ursa returning from captivity, appealed to S. Innocent (*nos adiit*), who took the case in hand as one submitted to his "legal competence" (*facultati legum intulit casum*). In other words, it was a case for his jurisdiction under the recent constitution of Arcadius and Honorius.

Case of
civil juris-
diction.

The terms of S. Innocent's judgment are worthy of notice, not only for their substance, but also as indicating the principles which S. Innocent allowed to guide him in the exercise of his new jurisdiction. "We determine, (1) with the warrant of the Catholic Faith, that that is the marriage, which by God's grace was established in the first instance; and (2) that cohabitation with the second woman can in no wise be *legal*, so long as the first survives and is not cast out by any divorce." S. Innocent thus held that he had to refer (1) to the Catholic Faith, and (2) to the secular law. Happily in this case he found them agreed. The Catholic Faith maintained the first marriage, and, as has been seen, would by the custom "universally observed" have done so no less if a divorce had been duly effected. No divorce, however, had been effected, and accordingly the secular law saw in the union of Fortunius with Restituta simply a case of bigamy. Restituta never had been the wife of Fortunius before the law.

The letter of S. Leo the Great (Bishop of Rome 440-461) to Nicetas, Bishop of Aquileia, shews that the barbaric inroad under Attila brought about cases parallel to that of Fortunius and Ursa; only, as the captives were usually men, it was in the cases of the wives that second marriages had commonly been contracted. S. Leo's decision is the same as that of S. Innocent. In all cases the first marriage is to be reverted to; yet without condemnation of the action of the women who had believed their husbands to be dead. In the case of any woman who might persist in remaining with the second husband although the first had returned, S. Leo decides that communion must be refused.

S. Leo the
Great.

In cases
of re-
marriage
during
absence
the first
marriage
to be
upheld.

The notices of this period may be concluded with three authorities of uncertain date and character, viz. (1) the Arabic Canons of S. Hippolytus (so-called), (2) the writer commonly named Ambrosiaster, and (3) the work once attributed to S. Chrysostom, which is known as the *Opus Imperfectum in Matthaeum*.

Arabic
Canons
of S.
Hippolytus.

(1) De Haneberg, the learned editor of the Arabic Canons of S. Hippolytus, claims that they are the genuine productions of the Father whose name they bear. S. Hippolytus was a contemporary of Origen, and if De Haneberg's opinion be correct, the canons should have been noticed among the authorities of the early part of the third century. The more usual opinion, however, assigns these Arabic Canons to another source, and to a later date, perhaps the fourth or fifth century.

Case of a
Christian
who casts
off a
concubine
and
marries.

The 16th Canon, which is given above in De Haneberg's Latin translation, is headed: "Of him who has a concubine, and wishes to cast her off, and marry another woman." The body of the canon runs: "If a Christian, after that he has lived with a particular concubine, who has borne him a son, desire to cast her off and marry another woman, he is blood-guilty (lit. *a slayer of man*), unless perhaps he have taken her in fornication."

The Roman law on the subject of concubines will be referred to in the chapter on polygamy. A concubine might not be entertained together with a wife, or with any other recognised concubine. Union with a concubine resembled what in modern language has been called a left-handed marriage, and was commonly characterised by disparity of social position. The bond which united a man to his wife might indeed be severed at will by divorce, but it was presumably lasting; the bond which bound him to his concubine might be severed at will without the incurrance of odium, and with an entire absence of formality, while from the first it was presumably temporary. The Church, therefore, as will be seen later, was prepared either to ratify or to ignore such unions as the particular case might require. If a baptized Christian wished to continue such an union, and remain in the communion of the Church, he was at liberty to do so without incurring the secular restric-

tions of marriage, if he accepted its Christian obligations. On the other hand, if he was not willing to be bound to his concubine by the obligations of marriage, he was required, as a condition of communion, to put her away, as in that case the union would be simply a union of fornication.

The canon of S. Hippolytus, whatever its date, is a fair instance of the attitude of the Church in the matter. The birth of a son is made the external test. If a particular concubine (that is to say, not the object of casual lust, but a partner recognised by the law) have borne the man a son, then if instead of admitting her as his wife in the Christian sense, he cast her off, he is blood-guilty ("a slayer of man"). By driving the woman to seek other relations he murders her soul. If, however, she have not been faithful to him, he need not feel under any obligation to retain her as a wife.

Even if this canon be really due to S. Hippolytus, and therefore referable to the beginning of the third century, it will not affect the conclusions which have been already arrived at for the earliest period of Christian history. It does not afford sanction to the severance of any union which has ever yet been recognised by the Church as a marriage. It is simply an acknowledgment of the fact that no Christian is bound in conscience to accept in marriage a woman with whom he has been connected in a different relation, and who has not proved faithful. If the concubine has been faithful, and has become the mother of a son, then, notwithstanding the license of the secular law, the man is really bound in conscience to accept the tie as that of Christian marriage. The canon may be compared with the recommendations of S. Francis Xavier to the Portuguese of Goa in the sixteenth century. S. Francis found unsanctioned unions with native women extremely prevalent, and made it his office to bring about a better state of things. When he saw that the union was a happy one, and promised well, he endeavoured to prevail upon the parties to seek the benediction of the Church, and so accept the full obligations of Christian marriage. Where, on the other hand, he saw no such promise, he endeavoured to induce the man to discard his companion.

Ambro-
siaster.

(2) The so-called Ambrosiaster is the unknown author of the *Commentaria in xiii Epistolas beati Pauli*, which were formerly ascribed to S. Ambrose. All scholars have long been agreed that these commentaries ought not to be ascribed to S. Ambrose, but it is not so easy to say who the true author was. A passage of S. Augustine cites what appears to be a quotation from these commentaries as the work of Saint Hilary (*sanctus Hilarius*),¹ and this has led to the surmise that the writer may have been Hilary the Sardinian, deacon of the Roman Church, though it is not likely that S. Augustine would have spoken of a schismatic as *sanctus*. However this may be, the author, now generally spoken of as Ambrosiaster, is the only Western writer of this period, with the exception of Lactantius, who upholds the right of Christian husbands to remarriage after divorce. He says plainly that "the husband may marry, if he have put away an offending wife; the husband not being bound by the law as the wife is; for 'the head of the woman is the man.'" On the other hand, "it is not permitted to a woman to remarry, if she have sent away her husband by reason of fornication or apostasy . . . because the meaner part has not quite the same rule to abide by as the more dignified." Here the unknown writer takes up a position which is repudiated by all the great doctors of Christianity. He is of opinion that there is an inherent inequality in the man and the woman, which involves unequal rights and duties as the result of the marriage bond. The woman in all cases remains bound; the man, in the specified case, becomes free.

"Husband
may
remarry,
if he have
put away
an offend-
ing wife."

The
innocent
wife may
not
remarry.

The "Opus
Imper-
fectum in
Mat-
thaeum."

(3) The *Opus Imperfectum in Matthaeum*, formerly ascribed to S. Chrysostom, appears to be the work of an Arian writer, probably of the sixth century. The writer holds that a man who retains an adulterous wife is "the partner of her turpitude," and therefore that he is bound to put her away. But he does not appear to recognise any right to remarriage.

Summary
of the
period.

The teaching of the period from Constantine to Justinian has involved a long, and it is to be feared, tedious investigation, which may now be summarized.

1. It is generally admitted, alike by Councils and by the

¹ S. Augustine, *Contra duas epistolas Pelagianorum*, lib. iv. c. 7.

Christian authors, that a husband may put away for *πορνεία*. His right to put away in this case is denied by no council and by no writer.

2. There is general but not unquestioned agreement that a man *ought* to put away his wife for *πορνεία*. Thus the Council of Neo-Caesarea, S. Asterius, Theodoret, S. Jerome, and the *Opus Imperfectum*. S. Augustine in his earlier years held that the husband lay under no obligation to put away the erring wife. In the *Retractations* he corrected this view, accepting that more generally current. No other writer and no council admits that the man is not bound to put away an adulterous wife. The conventional morality of the Empire, especially in the East, required the man to put away.

3. The wife may put away an adulterous husband, according to S. Basil, S. Ambrose, S. Jerome, and S. Augustine. No writer and no council denies the right of the wife to put away. Conventional feeling in the East is, however, strongly opposed to the exercise of the right. Much the same feeling appears to have existed in Gaul.

4. The only writer who seems to be in favour of the view that a wife is bound to put away an adulterous husband is S. Jerome. He says: "It follows that whatsoever is commanded to men applies in addition to women. For it cannot be that an adulterous wife is to be dismissed, and an adulterous husband to be retained. If 'one who is joined to a harlot maketh one body,' therefore also she who is associated with a whoremonger and unclean person is made one body with him." In the general view, however, no such obligation on the part of the wife was recognised.

5. That *πορνεία* means adultery or unfaithfulness after marriage is the view of the Councils of Arles and Neo-Caesarea, of Lactantius, S. Basil, S. Epiphanius, S. Gregory Nazianzen, S. Asterius, S. Chrysostom, Theodoret, S. Ambrose, S. Chromatius, S. Jerome, and S. Augustine. No authority denies that it includes adultery.

6. No authority can be cited as affirming that *πορνεία*, as the cause which justifies putting away, means pre-nuptial unchastity. No instance of divorce for this cause is recorded.

1. A husband may put away for *πορνεία*

2. A husband ought to put away for *πορνεία*.

3. A wife may put away an adulterous husband, but conventional feeling against it.

4. A wife is not bound to put away an adulterous husband.

5. *πορνεία* means adultery.

6. No authority takes *πορνεία* as pre-nuptial unchastity.

7. Some writers take it to include spiritual fornication. 8, 9, 10, 11. In the West all remarriage after divorce excluded. In the East the question is open as regards the husband.

7. Some writers would extend the meaning of *πορνεία* to include various forms of spiritual fornication. So S. Basil, S. Epiphanius, S. Augustine.

8, 9, 10, 11. On the point of remarriage after divorce the Churches of the West are more decided than the Churches of the East. In the West the Council of Arles and the African Code, with S. Ambrose, S. Jerome, and S. Augustine, decline to admit remarriage after divorce, even in the case of the unoffending husband, and where the offence of the wife is adultery. On the other hand, in this particular case Lactantius and the writer known as Ambrosiaster admit remarriage; but apparently in no other case. In the East S. Basil does not approve remarriage after divorce in any case, but is not prepared to visit such remarriage with penal discipline in the case of the man, whether the divorce was caused by his wife's sin or by his own. Epiphanius admits remarriage when the man has lost his wife by "fornication, adultery, or other evil cause"; and no less so in the case of the woman who has put away her husband. He may perhaps admit remarriage even in the case of the guilty party. Of S. Gregory Nazianzen it cannot be said that he affirms or denies the right of remarriage. S. Asterius admits remarriage in the case of the innocent man. S. Timothy of Alexandria gives an oracular answer. S. Chrysostom apparently does not admit remarriage after divorce in any case. Theodoret appears to have given contradictory judgments. Speaking generally it may be said of the period under review, that it shows the Western Churches maintaining the entire indissolubility of the marriage tie except by death, while the Churches of the East, under the pressure of the secular law and of the conventional morality of the Eastern Christians, utter an uncertain sound.

12. Adulterous wife not by most admitted to restoration on penitence. Theodoret and S. Augustine for restoration.

12. Whether an adulteress might be restored by her husband upon penitence, is a question which in the period under review was commonly answered in the East by a negative. The inequality in the treatment of the sexes which pervaded Roman custom and the Roman law had entered deeply into Christian feeling and practice. The Council of Neo-Caesarea will not allow a *clericus*, who retains a wife once guilty of adultery, to

continue the exercise of his sacred functions. S. Basil is against restoration. S. Chrysostom, quoting the prohibition of Deuteronomy, says that it is "in entire harmony with Christ." Theodoret, on the other hand, says that our Lord, "by barring connexion with another, compels the party, whichever it be, to return to the former marriage." But he may not have been considering the case of the adulteress. In the Western Church, S. Jerome pronounces against restoration of the offending wife. S. Augustine, on the other hand, maintains the mercy of the early centuries. Repeatedly insisting on the rightfulness, and indeed upon the duty, of restoration, he says in the *De Conjugiis Adulterinis* that the husband "has no right now to call her an adulteress, whose crime, she being penitent, he believes to be blotted out by GOD's mercy."

13. S. Augustine is thus of opinion that the guilty wife not only may be, but ought to be, restored upon penitence. Putting aside the doubtful case of Theodoret, the other writers of the period admit no such duty.

13. S. Augustine holds that she ought to be restored.

14, 15. Whether the guilty husband may be or ought to be received by the wife upon penitence was hardly a practical question. The guilty husband, penitent or not penitent, and whether he continued in his sin or not, was by the custom of the time permitted to continue his marriage relations.

14, 15. No question but that the penitent husband might be received.

16. No writer or council allows the guilty wife to be received by her husband so long as the adultery continues. S. Augustine had indeed in his early years said of divorce, even for adultery, "This is permitted, not commanded"; but in the *Retractations* he recalls this statement.

16. No authority allows the guilty wife to be restored so long as the adultery continues.

17. On the point of the reception by the wife of the impenitent husband who continues in his adultery, the Christian writers find themselves in serious conflict with the lax morality of the age. S. Basil says that "custom enjoins that husbands even living in adultery, and going on in whoredoms, be retained by their wives." "And so the wife must receive her husband coming home from his uncleanness, but the husband must send away her who is defiled from his house. Of all this again it is not easy to give account, but custom has thus provided." S. Gregory Nazianzen, remarking that the custom and the law

17. The husband who continued in his sin was commonly received by the wife.

of the Roman Empire countenance this grave inequality, declares, "I receive not this enactment. I praise not this custom." S. Asterius, complaining that by custom and law all impurity is allowed to the man, points out that divine and human laws differ. S. Augustine says, "Who would endure an adulterous wife? Yet the woman is bidden to endure an adulterous husband. What justice! Why, I ask thee?" Exsuperius of Toulouse, writing to S. Innocent I., says that "men who are communicants do not consort with wives guilty of adultery, while, on the other hand, wives are seen to remain in the fellowship of adulterous husbands." The Christian writers of the period may be said to be at one in their condemnation of the unequal tyranny of the custom of the day, which practically required a wife to submit to any guilt of adultery on the part of the husband. No Christian writer of this period, however, denies that the woman may remain with her husband in such circumstances if it is her wish to do so.

18. S. Matt.
xix. 9 not
cited by
any writer
to
support re-
marriage.

18. The verse S. Matt. xix. 9 is not cited by any writer as supporting the right of remarriage after divorce for adultery. S. Basil refers to it, but only to deduce an absolute prohibition of remarriage. S. Gregory Nazianzen says, apparently of this verse, "It is not clear which side is so endangered, the divorcing party or the divorced," probably reading *μοιχᾶται* without the *καὶ γαμήσῃ ἄλλην*; S. Chrysostom quotes the verse, but not in sanction of remarriage; S. Jerome similarly. S. Augustine, quoting the verse in the form familiar to us in the *Textus Receptus* and the *Authorised Version*, admits a difficulty of interpretation, but concludes notwithstanding that "if the rule is the same for both, in both it is adultery to unite one's self to another, even when the separation was for uncleanness."

C. *The East after Justinian.*

AUTHORITIES.

THE COUNCIL IN *TRULLO* (QUINISEXT).

Canon 87.

Ἡ τὸν ἄνδρα καταλιποῦσα μοιχαλὶς ἐστίν, εἰ ἐπ' ἄλλον ἦλθε, κατὰ τὸν ἱερὸν καὶ θεῖον Βασίλειον, ἐκ τῆς Ἱερεμίου προφητείας ἄριστα τοῦτο ἀναλεξάμενον· ὅτι, Ἐὰν γένηται γυνὴ ἄνδρὶ ἑτέρῳ, οὐκ ἐπιστρέψει πρὸς

τὸν ἄνδρα αὐτῆς, ἀλλὰ μαινομήνη μανθήσεται· καὶ πάλιν· Ὁ ἔχων μοιχαλίδα, ἄφρων καὶ ἀσεβής. Εἰ οὖν φανῇ τοῦ ἀνδρὸς ἀλόγως ἀναχωρήσασα, ὁ μὲν συγγνώμης ἔστιν ἄξιος, ἡ δὲ ἐπιτιμίων. Ἡ δὲ συγγνώμη τούτῳ πρὸς τὸ κοινωνεῖν τῇ ἐκκλησίᾳ δοθήσεται.

Ὁ μέντοι καταλιμπάνων τὴν νομίμως αὐτῷ συναφθείσαν γυναῖκα, καὶ ἑτέραν ἀγόμενος, κατὰ τὴν τοῦ κυρίου ἀπόφασιν, τῷ τῆς μοιχείας ὑπόκειται κρίματι.

Κεκανόνισται γὰρ παρὰ τῶν πατέρων ἡμῶν, τοὺς τοιούτους ἐνιαυτὸν προκλαίειν, διετίαν ἐπακροῦσθαι, τριετίαν ὑποπίπτειν, καὶ τῷ ἐβδόμῳ συνίστασθαι τοῖς πιστοῖς, καὶ οὕτω τῆς προσφορᾶς καταξιούσθαι.

Canon 53.

Ἐπειδὴ μείζων ἢ κατὰ τὸ πνεῦμα οἰκειότης τῆς τῶν σωμάτων συναφείας, ἔγνωμεν δὲ ἐν τισι τόποις τινὰς ἐκ τοῦ ἁγίου καὶ σωτηριώδους βαπτίσματος παῖδας ἀναδεχομένους, καὶ μετὰ τοῦτο, ταῖς ἐκείνων μητράσι χηρεύουσας γαμικὸν συναλλάσσοντας συνοικέσιον, ὀρίζομεν, ἀπὸ τοῦ παρόντος μηδὲν τοιοῦτον πραχθῆναι. Εἰ δέ τινες μετὰ τὸν παρόντα κανόνα φωραθεῖεν τοῦτο ποιοῦντες, πρωτοτύπως μὲν οἱ τοιοῦτοι ἀφιστάσθωσαν τοῦ παρανόμου τούτου συνοικεσίου, ἔπειτα δὲ καὶ τοῖς τῶν πορνευόντων ἐπιτιμίῳ ὑποβλήθωσαν.

The history of the law of marriage in the East from the time of Justinian onwards is the history of deplorable weakness on the part of the Christian Church, when confronted with the secular legislation. In one particular only can it be said that the Eastern Church made an adequate stand. She never tolerated the fatal facility with which the Roman law accorded divorce by mutual consent alone; and after a long struggle, which lasted till the tenth century, she finally swept the abuse away. But, perhaps because the struggle was here so hard, on all other points the Eastern Church appears to have permitted the secular legislation to rule the conduct of her children; and at the present day the list of grounds on which divorce is accorded with permission to remarry is little more than the echo of the old Roman legislation, and reads as if the Church of the East were well content to suffer divorce "for every cause." Her practice in this matter is so greatly divergent from that of Western Christendom, that it may fairly be asked whether if every doctrinal difference between East and West

Intro-
ductory
Statement

Great
laxity
of the
Eastern
Churches
as to
divorce
and re-
marriage.

were swept away, it would even thus be possible for the Churches to unite, so long as the practice of the East in the matter of marriage and divorce remains what it is. It is impossible to reconcile the practice of the two great sections of Christendom by any admissible compromise. If the Western Church has been right, as this treatise will hold her to have been right, in asserting that there is no dissolution of the marriage bond save by death, then the Eastern Church is terribly in the wrong. If, on the other hand, the practice of the Eastern Church can be justified, it can only follow that the Western Church has bound burdens on men's shoulders all too grievous to be borne, and has made hearts sad which GOD had not made sad. Between the East and the West it is necessary to choose.

It will be convenient in this chapter to consider in the first place the history of the practice of divorce by mutual consent alone (*διαζύγιον κατὰ συναίνεσιν*, *divortium ex consensu*), and then to go on to consider the history of divorce for definite reasons assigned (*διαζύγιον κατὰ πρόφασιν εὐλογον*, *divortium ex rationabili causa*, *repudium*).

(i.) *Divorce by mutual consent.*

Completely
recognised
by Roman
law.

In the last chapter the progress of marriage legislation from Constantine to Justinian was briefly traced, and the influence of Christian ideas in connexion with it noticed; and it will be remembered that there was no moment during the whole of that period in which it was not open to any married couple to separate finally under the sanction of the civil law, by the mere expression of their mutual consent. So far as that law was concerned, husband and wife had but to agree that they would be husband and wife no longer, and they might go their several ways without fear and without reproach, free to contract marriage as they would. Against this unrestrained license the teachers of the Christian Church protested all along. They taught that Christians must understand that there was one law for the Empire and another for the Church.

Opposed by
Christian
teachers.

Even those writers, whether in East or West, who prior to Justinian are found admitting remarriage after divorce in cases

of adultery, do so rather by the way, in the very process of earnestly condemning the existing license of remarriage after unjustified repudiations. Thus Lactantius, indicating to Constantine what were the "Divine maxims," and how they differed from the law of the Empire, impressed upon him that "he is an adulterer who has married one dismissed by her husband, as also he who except for the crime of adultery hath dismissed his wife to marry another." S. Asterius of Amasea was dealing with a community whom he charges as "ye who trade in wives, who exchange them as garments from time to time . . ., who marry the dowry and the property, but count the persons matter of gain and traffic; who on slight offence write a bill of divorce, and leave, as it were, many widows living. Make up your minds, be entirely convinced of it, that marriages are severed by nothing save death and adultery." S. Epiphanius, though the passage may be corrupt, is willing, like the present Eastern Church, to admit remarriage "when separation hath ensued for whatever ground, fornication, or adultery, or other evil cause"; but he requires a ground, or evil cause, which the law did not. S. Basil, on whose concessions the later Eastern Church has largely based her action, conceded the admission to communion without penance, of persons remarrying after divorce for adultery, but did not concede it in cases of divorce generally. The spirit, therefore, of those who made concessions was the spirit of those who retire from what seems to them, however mistakenly, a less important outwork, for the purpose of defending the inner citadel; and their expressions of concession are in fact *obiter dicta*, let fall by the way, while their attention was fixed on points which seemed of more vital moment.

The facility of divorce by mutual consent was first interfered with by the legislation of Justinian. In 536 A.D. Justinian himself had laid down in the 22nd Novel that mutual consent was entirely sufficient to effect a divorce; but in 542 A.D., in the 117th Novel, he withdrew the permission to effect such divorces, by enacting that only those divorces were in future to be admitted which were based upon the grounds specified in the Novel itself, notwithstanding any other grounds of divorce

Admitted
by
Justinian
in his 22nd
Novel.

Forbidden
by
Justinian
in his 117th
Novel.

which might be found, whether in the ancient or in the newer legislation. This enactment was confirmed in the year 556 A.D. by the 134th Novel, which expressly prohibits the dissolution of marriage by consent. It is, however, evident that the old Roman view of marriage and divorce, as matters which lay within the province of the individual citizen rather than within the province of the State, had considerable influence, and that, notwithstanding the Novels, some persons did effect divorces by consent, and that so far as validity was concerned these divorces stood. Justinian, in the same Novels in which he enacts prohibitions, assigns penalties in the case of persons who should, in spite of the prohibitions, effect divorce. Such persons were to be confined to a monastery, and forbidden to remarry. Theodore of Hermopolis, who wrote a brief of the 134th Novel, remarks that a divorce so prohibited, though immoral in character, was notwithstanding good in law (*κακῶς μὲν γίνεται πλὴν ἔρρωται*).¹ At the same time the preamble of the repealing Novel of Justinian's successor, Justin II., shews that the prohibition had been very generally complied with, although its provisions had given grave dissatisfaction.

Such
divorces
valid
notwith-
standing,
although
irregular.

Divorce by
consent
again
legalised by
Justin II.

Condemned
by the
Council in
Trullo.

The Novel referred to is the second Novel of Justin II. It was issued in 566 A.D., and declares that the legislation of Justinian by withholding the recognition of divorce by consent had developed hatred and evil passions. Justinian's prohibitions had therefore been largely regarded during the twenty-four years during which they had stood unrepealed; but in 566 A.D. the lawfulness of divorce by mutual consent was again as fully recognised by the law of the Empire as if Christianity had been unknown in it. For nearly two hundred years the statute books of the Eastern Empire shew no sign of amelioration. The Church indeed at no time acquiesced in the facility of divorce thus sanctioned by the secular law. It was during this period that the canon of the Council *in Trullo*, to be presently noticed, was passed. But it was not till the Eclogue of the Emperor Leo III. (the Isaurian) and his son Constantine, which was enacted in 740 A.D., that a civil statute of the Empire abolished the license of divorce by consent. The

¹ Zhishman, *Eherecht der Orientalischen Kirche*, p. 104.

preamble of the Eclogue is well worthy of remark. The Mosaic history of the creation, and the gospel narrative of our Lord's teaching, alike find place in it as reasonable sources of legal principles. The first had ruled that in marriage there was "one flesh"; the second that what God had joined together man might not put asunder, except for fornication. "This law we now desire to follow and obey, and besides these things desire to add nothing further." As, however, many persons severed their unions on insufficient grounds, the present law would specify the grounds on which alone marriages might be dissolved. Four grounds of admissible divorce were specified. It was not however easy, even in the eighth century, for the clearest enactments of the legislative power to uproot so inveterate a practice as was that of divorce by consent. The Emperors Leo IV. and Constantine (776-780 A.D.) were forced to legislate again, this time in a more penal sense. Every divorce effected by "vicious agreement" (*κακῇ συμφωνίᾳ*) was forbidden under the penalty of a sensible fine, and carried with it the annulment of any subsequent marriage.

Further
enact-
ments
of the
Emperors.

We next come to a Constitution in a contrary sense, which cannot be certainly assigned to the name of any Emperor. Zachariä places it after the Novels of Irene and Nicephorus, which would bring it to the middle of the ninth century. If, however, we are to ascribe any importance to the fact that the Canons of the Patriarch Nicephorus (806-815 A.D.) recognise that divorce by consent stands good before the secular law, the undated Constitution may perhaps be best assigned to the end of the eighth century. For the sake of peace in the married state it re-establishes divorce by consent, and withdraws all menaces and penalties which had been directed against it, affirming that the retention of the old facility of divorce was alike to the advantage of the parties and to that of the community. From the Eclogue *Privata aucta*, which may perhaps be assigned to the time of Basil the Macedonian (867 A.D.), it is evident that divorce by consent was then recognised as valid.

At last, however, at the end of the ninth century, we find

¹ Zhishman, *Eherecht der Orientalischen Kirche*, p. 105.

Divorce by consent finally abolished at the end of the 9th century.

Justinian's prohibition of these divorces re-enforced, and never again relaxed. The Prochiron of 870 A.D., the Epanagoge of the Emperors Basil, Leo, and Alexander which appeared about 884 A.D., and the Basilica promulgated between 905 and 911 A.D., all interdict divorce by consent.

It must be confessed that the marriage laws of the Eastern Empire, regarded as the laws of a professedly Christian community, are shameful evidence of unworthy living. But it must not be forgotten that the responsible teachers of the Eastern Church do not appear to have ever swayed in this most vital matter; that they waged their battle against the party of laxity with varying success for many centuries; and that to them it is due that from the end of the ninth century onwards the laws of the states of Eastern Christendom have continued so far at one with the law of Christ, that they uniformly prohibit the ancient license of consensual divorce.

Faithfulness of the Church.

The earliest Christian testimony upon the subject has already been noticed. It will serve no sufficient purpose to attempt to follow the utterances of individual Christian writers in the ages which succeed Justinian. On this point there appears to have been no difference of opinion. But the 87th Canon of the Council *in Trullo* (692 A.D.), which was put forth, as has been seen, during a period in which consensual divorce was fully legalised, is worthy of notice. The lax repealing Novel of Justin II. had been in force for 126 years; yet the Council expressly renewed former prohibitions, and attached the heaviest ecclesiastical penalties to any man who should leave his lawful wife, and marry another. It was no doubt largely in consequence of the bold stand thus made by the Council *in Trullo* that the Eclogue of Leo the Isaurian (740 A.D.), as we have seen, put a stop to the legality of consensual divorces.

(ii.) *Divorce on specified grounds.*

Lax provisions of the secular law not opposed by the Church.

Leaving now the subject of divorce by mutual consent, we may proceed to consider that of divorce on specified grounds. It is here that the wide gulf which separates the East from the West becomes painfully apparent. By the time of Justinian the ill-advised opportunist policy of the Eastern Church, to

which even the great S. Basil had seen fit to condescend, had completed its fatal work. Of the whole long list of specified grounds of divorce which were admitted by the secular law, only one, that of absence without tidings, appears to have been either repudiated or even questioned by this too-complacent Church. Zhishman, whose valuable work should be consulted by any who wish to pursue the study of the marriage law of the Eastern Churches, remarks: "The enactments of the Emperors and Princes as to grounds of divorce never met with an ecclesiastical contradiction. No Council, no Patriarch, no Bishop of the East has ever in this matter called the Emperors to account, assigned penalties to them, or forced them to the repeal of their enactments."¹ Under these circumstances it would answer no purpose to burden this chapter with many quotations. The Christianity of the East had made up its mind that adultery was the legitimate ground of a divorce which carried with it, at least for the innocent party, the right of remarriage. It had no less made up its mind that divorce with the right of remarriage might be accorded in the many other cases specified by the secular law. For more than thirteen centuries this has been the attitude of the Church of the East.

It will be sufficient for the purposes of this work if we proceed to state what are the grounds of divorce actually admitted by the Churches of the East at the present day. They are the grounds of divorce admitted by the laws of Justinian, with certain modifications introduced in later times.

In the Eastern Churches of the present day divorce is admitted as follows:

A. Grounds for divorce with penalty attached.

1. High treason.
2. Designs by either of the partners on the life of the other.
3. Adultery.
4. Circumstances affording presumption of adultery, or equivalent to adultery.
5. The procuring of abortion.

¹ Zhishman, *Ehrecht der Orientalischen Kirche*, p. 115.

6. Difference of religion arising from the conversion to Christianity of one of the partners.
7. The reception by either partner of his or her own child from the baptismal font.

B. Grounds for divorce without penalty attached.

1. Impotence.
2. Absence without tidings received, Captivity, and Slavery.
3. Insanity.
4. Leprosy.
5. The undertaking of monastic obligations.
6. Episcopal Consecration.¹

A. 1. *High Treason* (τὸ φρονῆσαι κατὰ βασιλέως).

High Treason was assigned as a ground of divorce by Theodosius II. and Valentinian III. in 449 A.D., and repeated by Justinian in his 22nd Novel. The reason given is that High Treason is the greatest of all crimes. For the same reason High Treason appears in the 117th Novel of Justinian as the first of the admitted grounds of divorce. Divorce is decreed as due to the offence considered in itself, and not merely because of other penalties which may be incurred, as, for instance, banishment or captivity. Collusion of High Treason is also recognised as ground for divorce.

A. 2. *Designs by either of the partners on the life of the other* (τὸ ἐπιβουλεύσασθαι θάτερον τῇ τοῦ ἑτέρου ζωῇ).

This comes next in order among the grounds of divorce. The reason assigned is that conjugal fidelity is more seriously infringed by designs against life than even by adultery; and further, inasmuch as the Eastern Church knows nothing of simple separation of life, or divorce "from bed and board," the separation which becomes necessary under circumstances of the kind now contemplated has to be decreed as a complete divorce.

To constitute a ground of divorce, it is essential that the designs should really affect the *life* of the partner. Poison

¹ Zhishman, pp. 119, 731.

and the use of deadly weapons are obvious evidence; but even merely to threaten the life of the partner is held to be sufficient ground for divorce. It is also ground for divorce if one partner is aware that the life of the other is in danger, and yet withholds knowledge of the danger alike from the partner himself and from the proper authorities. Designs on the life of the partner were recognised as a ground of repudiation in all the marriage legislation of Justinian; in the Code, in the 22nd Novel, and in the 117th Novel.¹ The ground has been accepted in all the subsequent legislation.²

A. 3. *Adultery* (μοιχεία).

Adultery is defined as the carnal union of a wife with a man not her husband, or of a man with the wife of another man. The sin of a husband with an unmarried woman is not in the Eastern Churches reckoned as adultery. Divorce is not decreed

- (i.) When the complainant is shewn to have committed the same offence, or to be in collusion with the offending party, or to have accepted without protest the continuance of the unchastity.
- (ii.) When the complainant has already either (*a*) directly forgiven the offending party, or (*b*) by the resumption of marital relations has implied forgiveness.
- (iii.) When the innocent party has not made formal complaint within the period specified by the law.

Prenuptial unchastity is not a ground of divorce, except when it has occurred subsequently to the betrothal, in which case it is treated as adultery. Pregnancy by a third person at the time of marriage is also admitted as a ground of divorce.

In the East the guilty parties in a divorce suit are under no circumstances permitted to marry one another. Even the death of the husband does not remove the bar. By the 134th Novel of Justinian an adulteress was to be confined for life in a convent. Leo the Philosopher added to this the cutting off of the offender's nose. This particular punishment appears to

¹ Cod. v. 17. 8, § 2. 3; Nov. 22, cap. 15, § 1; Nov. 117, cap. 8, § 3.

² Zhishman, p. 733.

have been favoured in Eastern countries. In India in the present day it is sometimes resorted to by an offended husband, but there, it need hardly be said, his action is accounted criminal. Later enactments of the Eastern Emperors modify the penalties assigned.

Not only is it forbidden to the guilty parties to marry each other under any circumstances, but it is forbidden to the guilty wife to marry at all. An adulterer—that is to say, a man who has sinned with a married woman—may marry a third person when he has fulfilled his term of canonical penance.

Adultery was an admitted ground of divorce in the legislation of Justinian, and has always been so accounted in subsequent times.¹

A. 4. *Circumstances affording presumption of adultery, or equivalent to adultery.*

(a) *Offences of the wife.*

- (a) When the wife against the will of the husband shares the repasts of strange men, or visits the baths in their society.
- (β) When the wife without just cause and without the consent of her husband stays away from home in strange houses other than the house of her parents.
- (γ) When the wife without the knowledge and consent of her husband, or against his command, has attended the circus, the theatre, or the amphitheatre.

All three of these grounds of divorce appear in the marriage legislation of Justinian, and have been since maintained.

(b) *Offences of the husband.*

- (a) When the husband has designed to betray the chastity of the wife to other men.
- (β) When the husband has charged the wife with adultery, and failed to prove it.

¹ Zhishman, pp. 734 *sqq.*

- (γ) When in the house, in which the husband resides with his wife, he has unlawful intercourse with another woman; or when in the same place, but in another house, he has intercourse with another woman, and refuses to give up his unchastity after repeated warnings given to him, whether by his parents, or by his wife's parents, or by other respectable persons.

These three grounds of divorce also appeared in the legislation of Justinian, and have also been since maintained.¹

A. 5. *The procuring of abortion* (ἡ ἄμβλωσις, ἡ ἔκτρωσις, ὁ φόνος ἐμβρύων διὰ φαρμάκων).

The procuring of abortion, which defeats one of the aims of the Divine ordinance of marriage, is on that account considered in the East to be an adequate ground of divorce. The prevention of conception is included under the head of procuring abortion. The offence of procuring abortion was punished with the severest penalties both by Church and State in the earliest centuries of the Christian era, but it was not till the 22nd Novel of Justinian, in 536 A.D., that it became a recognised ground of divorce. It does not appear as a ground of divorce in the 117th Novel of Justinian, but Leo the Philosopher, in his 31st Novel, re-instates it; and from the date of this Novel no change appears to have been made.²

A. 6. *Difference of Religion arising from the conversion to Christianity of one of the partners* (τὸ κατὰ τὴν πίστιν διάφορον).

It will be seen in chapter VIII. that this ground of divorce, which deals with the dissoluble marriage of non-Christians, is accepted by the West. It is to be noted, however, that in the East, for the purpose of divorce, the unbeliever (ὁ ἄπιστος) may be—

1. An unbeliever never yet connected with Christianity.
2. A catechumen.
3. An apostate.

¹ Zhishman, pp. 743 *sqq.*

² *Ibid.* p. 753.

In the case of an apostate, who had once been bound by Christian marriage, the West would hold the marriage to be indissoluble. The East is ready to sever the bond.

According to Zhishman divorce may be decreed—

- (i.) When the unbeliever refuses to abide with the believer.
- (ii.) When the Christian partner is convinced that he will not be able to convert the unbeliever to the Christian religion.
- (iii.) When the unbeliever hinders the believer from the exercise of the Christian religion.
- (iv.) When the unbeliever insists that the believer shall take part in strange worship.

Of these grounds the second is not in harmony with the Pauline teaching, or with the accepted practice of the West. In the time of the patriarch Theodotus II. (1151–1153 A.D.) Basilicus Bicinator, after his baptism, demanded a divorce, on the ground that in spite of his endeavours his wife declined to follow him in his conversion to Christianity. The patriarch decreed the divorce accordingly.

The legislation of Justinian does not deal with the divorce and remarriage of converts. The practice of the Church appears to be chiefly based on the 72nd Canon of the Council in *Trullo*. (See chapter VIII.)¹

A. 7. *The reception by either partner of his or her own child from the baptismal font* (ἡ ἀναδοχὴ τοῦ ἰδίου υἱοῦ ἀπὸ τοῦ ἁγίου Βαπτίσματος).

This ground of divorce, of all perhaps the most repugnant to the mind of the Divine Founder of marriage, springs from the fiction of spiritual relationship. Spiritual relationship, as will be noticed in chapter X., succeeded in great part to the position occupied under the Roman law by relationship of adoption, and the principle of *respectus parentelae*, which barred marriage between persons related by adoption, found its analogue in the respect of the god-child for the god-parent. That a marriage between a god-father and his god-daughter, or

¹ Zhishman, p. 754.

between a god-mother and her god-son, might not unreasonably be discountenanced by ecclesiastical law may well be conceded. The relationship of protection and of training which is implied may be best free from the suggestion of other possibilities. But to maintain that this relationship bars marriage essentially, and still more to affirm that those whom GOD has joined together are to be put asunder if either should assume the office of god-parent to their child, on the ground of an incestuous relationship now established between them, will seem to the mind of the Anglican churchman to be the very perversity of impiety. It stands, however, as one of the recognised grounds of divorce in the Eastern Churches, and it would be of little service to comment farther upon it.

This ground of divorce apparently dates from the Council *in Trullo*, the 53rd Canon of which deals with it. It does not require much discernment to see that this ground of divorce would be willingly brought into play by persons who were tired of their union, and accordingly we find that the Emperors Leo IV. and Constantine VI. issued a Novel between 776 and 780 A.D., in which, while spiritual relationship is fully recognised as a ground of divorce, the collusion of the partners to effect it is visited with severe penalties.¹

B. 1. *Impotence.*

Physical incapacity, which in the West is everywhere recognised as a ground for the declaration of the nullity of a marriage, is in the East, at least in the case of the man, a ground of divorce. Justinian's 22nd Novel lays down that, as the period of two years before thought sufficient for the establishment of the fact has proved in some cases to be insufficient, the duration of the incapacity must extend to three years before the divorce is accorded. This rule remains in force. The incapacity must have lasted for three years from the time of the solemnization of the marriage. If it is only supervenient incapacity it is no ground of divorce. Barrenness in the case of the woman is no ground of divorce. Physical incapacity to bear children is a ground for the

¹ Zhishman, p. 757.

annulment of a betrothal; but, according to Zhishman, even physical incapacity for the sexual union is in the case of the woman not regarded as a ground of divorce when the marriage has once been solemnized.¹

B. 2. *Absence without tidings* (ἡ ἀποδημία ἀφανής), *captivity and slavery* (ἡ αἰχμαλωσία, ἡ δουλεία).

Absence without tidings, as also captivity and slavery, have been retained by the Eastern Churches in their lists of admitted grounds of divorce; but it is to the honour of those Churches that in this matter they have asserted the instincts of Christian discipline in opposition to the concessions of the secular law. By the legislation of Justinian, if a man had been absent from his wife in a distant land for a long period, and no tidings of him had been received, the wife was permitted to contract a fresh marriage; and even in the event of the husband's return she was not required to surrender the second marriage. The regulations in the case of a soldier absent on service differed somewhat from those affecting other persons.

The Church, however, while admitting that a person whose partner has been so long absent as to afford presumption of death may proceed to contract a new marriage, rules that if the missing partner return he may claim his wife again. In other words, the second union is only admitted on presumption of death, and subject to correction by fact. There is therefore in no true sense a divorce. The Church bases mainly on S. Basil's canon, which was noticed in the last section, and on the 93rd canon of the Council *in Trullo*. The evident want of harmony between these canons and the provisions of the secular law has been a considerable difficulty to Eastern canonists, who consider themselves as bound both by the secular and by the ecclesiastical legislation; and they have sometimes been at pains to show that there is no essential contradiction. The contradiction is, however, complete in the most essential point of all. The secular law holds that the bond may be severed without regard to future possibilities; the Church affirms that

¹ Zhishman, p. 759.

the bond stands, notwithstanding any new union, if the former partner lives.

The husband may, however, if he see fit, avail himself upon his return of the provision which admits divorce and remarriage in the case of adultery.¹

The admission of divorce by the old Roman legislation in the cases of captivity and slavery was made on an entirely different ground from that of absence without tidings. Before the Roman law there could be no equality of condition between a freeman and a slave: and as the difference of condition was a bar to marriage, so when it supervened after marriage it was held not only to be an adequate ground of divorce, but to void the marriage *ipso facto*. The 22nd Novel of Justinian is an advance in the Christian direction, when it requires the lapse of five years before divorce with the right of remarriage is admitted; and the 33rd Novel of Leo the Philosopher brings the secular law entirely into harmony with Christian discipline, requiring the partner left behind to abstain from any fresh union during the whole continuance of the captivity.²

B. 3. *Insanity* (ἡ μανία).

Insanity is now admitted by the Eastern Churches as a ground of divorce. The remarkable reply of S. Timothy of Alexandria (385 A.D.), when questioned on this subject, has been already noticed.³ While shrinking from a peremptory veto he says that remarriage even in such a case is not free from the character of adultery. Insanity is not one of the grounds of divorce specified in the 117th Novel of Justinian. By the 111th Novel of Leo the Philosopher (c. 900 A.D.) it was enacted that when a man's wife was the victim of mania, the man might after three years of waiting obtain a divorce with right of remarriage. The 112th Novel of the same emperor extended the right of divorce to the wife of an insane husband. The legislation of Leo is repeated by the Emperor Nicephorus Botaniates (1078-1081 A.D.). The later canonists have fully accepted this legislation.⁴

¹ Zhishman, p. 762. ² *Ibid.* p. 767. ³ P. 310. ⁴ Zhishman, p. 769.

B. 4. *Leprosy* (ἡ λώβη).

In the Eclogue of Leo III. the Isaurian (740 A.D.) leprosy is recognised as a ground of divorce. Apparently this is the only instance of legislation on this head.¹

B. 5. *The undertaking of monastic obligations* (τὸ διαζύγιον διὰ σωφροσύνην καὶ ἄσκησιν).

The Eastern Churches take the ground that the religious life is a higher state than the married life, and that the married life may be rightly severed to make place for it. This ground of divorce was recognised in the legislation of Justinian, and has been since maintained. The divorce is complete, carrying with it the right of remarriage for the partner left in the world.²

B. 6. *Episcopal Consecration* (ἡ χειροτονία τοῦ ἐπισκόπου).

In the Eastern Churches a bishop is not permitted to be married. If therefore a married priest is appointed a bishop, it is required as a condition of his consecration that his wife shall consent to a divorce, and that she shall retire to a convent. The divorce in this case, however, only amounts to a separation of life, as the remarriage of the wife is not allowed. Episcopal consecration is not recognised by the legislation of Justinian as a ground of divorce. The 48th Canon of the Council *in Trullo* requires the consent of the wife to the separation, and rules the inadmissibility of her remarriage. These regulations have been maintained.³

D. *The West after Justinian.*

AUTHORITIES.

S. GREGORY THE GREAT.

Epistolarum, lib. xi. 45. *Ad Theoetistam Patriciam*.⁴

Si enim dicunt religionis causa conjugia debere dissolvi, sciendum est quia etsi hoc lex humana concessit, divina lex tamen prohibuit. Per se enim Veritas dicit: *Quae Deus conjunxit, homo non separet*. Quae etiam ait; *non licet dimittere uxorem, excepta causa fornica-*

¹ Zhishman, p. 772.² *Ibid.* p. 773.³ *Ibid.* p. 778.⁴ Migne's Ed. tom. iii. p. 1161.

tionis. Quis ergo huic coelesti legislatori contradicat? Scimus quia scriptum est: *Erunt duo in carne una.* Si ergo vir et uxor una caro sunt, et religionis causa vir dimittit uxorem, vel mulier virum in hoc mundo remanentem, vel etiam fortasse ad illicita migrantem, quae est ista conversio, in qua una eademque caro et ex parte transit ad continentiam, et ex parte remanet in pollutione?

Lib. xi. 50. *Ad Adrianum Notarium.*¹

Agathosa latrix praesentium questa est maritum suum contra voluntatem suam in monasterio Urbici abbatis esse conversum. Quod quia ad ejusdem abbatis culpam et invidiam non est dubium pertinere, experientiae tuae praecipimus ut diligenti inquisitione discutiat, ne forte cum ejus voluntate conversus sit, vel ipsa se mutare promiserit. Et si hoc repererit, et illum in monasterio permanere provideat, et hanc, sicut promisit, mutare compellat. Si vero nihil horum est, nec quoddam fornicationis crimen, propter quod viro licet relinquere uxorem, praedictam mulierem commisisse cognoveris, ne illius conversio uxori relictæ in saeculo fieri possit perditionis occasio, volumus ut maritum suum illi, vel si jam tonsuratus est, reddere omni debeas excusatione cessante. Quia etsi mundana lex praecipit, conversionis gratia, utrolibet invito, posse solvi conjugium, divina hoc tamen lex fieri non permittit. Nam excepta fornicationis causa, vir uxorem dimittere nulla ratione conceditur, quia postquam copulatione conjugii viri atque mulieris unum corpus efficitur, non potest ex parte converti, et ex parte in saeculo remanere.

GREGORY II.

Capitulare Gregorii Papae II. (Datum Martiniano Episcopo, Georgio presbytero, &c., in Bavariam ablegatis, 715 A.D. or 716 A.D.), c. 6.²

Et non licere³ in invicem fraudare, nisi ex consensu ad tempus ut vacent orationi, dicente de hoc ipso apostolo: *Alligatus es uxori; noli quaerere solutionem:* id est, superstitute conjuge, ad alteram feminae concupitam⁴ non velle transire, quia eodem doctore gentium adstruente: *Qui fornicatur, in corpus suum peccat*, hoc est, in uxore propria cum qua unum corpus est, cui fraudando per amplexus illicitos semetipsum sub peccati reatu objurgat.

¹ Migne's Ed. tom. iii. p. 1169.

² Mansi, tom. xii. p. 259.

³ lege liceat.

⁴ lege alterius feminae concubitum.

Gregorius II. Papa ad varias Bonifatii consultationes rescribit.

(726 A.D., Nov. 22.)¹

Nam quod posuisti, quodsi mulier infirmitate correpta non valuerit viri debitum reddere, quid ejus faciat jugalis; bonum esset, si sic permaneret, ut abstinentiae vacaret. Sed quia hoc magnorum est, ille, qui se non poterit continere, nubat magis. Non tamen subsidii opem subtrahat ab illa, cui infirmitas praepedit et non detestabilis culpa excludit.

ZACHARIAS, 747 A.D.²

Zachariae Papae Epistola VII. ad Pipinum Majorem Domus itemque ad episcopos, abbates et proceres Francorum. Respondet de diversis capitulis a Pipino per Ardobanum missis, A.D. 747.

c. 7. De laico pellente suam conjugem ex canone sanctorum apostolorum, capitulo 48. Si quis laicus uxorem propriam pellens, alteram vel ab alio dimissam duxerit, communione privetur.

c. 12. De his qui uxores aut viros dimitunt, ut sic maneant, ex concilio suprascripto Africano, capitulo 69 ita continetur: Placuit ut secundum evangelicam et apostolicam disciplinam, neque dimissus ab uxore, neque dimissa a marito, alteri jungantur; sed ita maneant, aut sibi invicem reconcilientur: Quod si contempserint, ad poenitentiam redigantur.

COUNCIL OF FRIULI.

(Concilium Forojuliense, 791 A.D.)³

Canon 10.

Item placuit ut, resoluta fornicationis caussa jugali vinculo, non liceat viro, quamdiu adultera vivit, aliam uxorem ducere, licet sit illa adultera; sed nec adulterae, quae poenas gravissimas vel poenitentiae tormentum luere debet, alium accipere virum, nec vivente, nec mortuo, quem non erubuit defraudare, marito. Nam etsi legatur in sacris evangelicis paginis, sola fornicationis caussa dixisse Dominum, dimittere virum uxorem suam: non tamen legitur concessisse aliam, vivente illa, in conjugio sibi sociare; prohibuisse quidem modis omnibus non ambigitur. Ait enim: *Quicumque dimiserit uxorem suam, nisi ob fornicationem, et aliam duxerit, moechatur: et qui dimissam duxerit, moechatur.* Qua de re ita diffinire prospexi-

¹ Jaffé, *Monumenta Moguntina*, Berolini, 1866, p. 89.

² Mansi, tom. xii. pp. 330 sqq.

Ibid. tom. xiii. p. 849.

mus, ut juxta ejusdem Domini mellifluam vocem, nemo haec interdicta violator inculcare praesumat. Sed quoniam in medio ambiguus interponitur sermo, id est, *nisi ob fornicationem*; quaeri nimirum potest, utrum ad solam licentiam dimittendi uxorem, *qui dimiserit uxorem nisi ob fornicationem*, an etiam ad utrumque dictum refertur, hoc est, ad aliam, vivente illa, accipiendam, quasi dixerit: Qui dimiserit uxorem suam, et aliam, nisi ob fornicationem, duxerit, moechatur. Et ideo peritissimi viri beati Hieronymi libellum commentariorum recenseri nobis studiose mandavimus, anxie utique cognoscere festinantes, qualiter idem famosissimus doctor haec sacrata dominica verba, juxta capacioris ingenii sui subtilitatem, sensisse monstraretur. Cujus nimirum sensum sagaciter explorantes, in promptu nihilo minus patuit, ad solam dimittendi uxorem licentiam pertinere. Nam cum more suo vir sanctus hujus capituli summatim seriem exponendam transeurreret, inter caetera et post pauca sic ait: Et quia poterat (inquit) accidere, ut aliquis calumniam faceret innocenti, et ob secundam copulam nuptiarum veteri crimen impingeret, sic priorem dimittere jubetur uxorem, ut secundam, prima vivente, non habeat. Non enim debet imitari malum adulterae uxoris, et si illa duo, immo unam carnem, per scissuras fornicationum divisit in tres, dividat in quatuor. Unde patenter datur intelligi: quamdiu vivit adultera, non licet viro, nec potest impune secundas contrahere nuptias.

COUNCIL OF ROME.

(Synodus Romana, 826 A.D.)¹

Canon 36.

Nulli liceat excepta causa fornicationis adhibitam uxorem relinquere, et deinde aliam copulare: alioquin transgressorem priori convenit sociari conjugio. Sin autem vir et uxor divertere pro sola religiosa inter se consenserint vita, nullatenus sine conscientia episcopi fiat, ut ab eo singulariter proviso constituentur loco. Nam uxore nolente, aut altero eorum, etiam pro tali re matrimonium non solvatur.

COUNCIL OF ANGERS.

(Concilium Andegavense, 453 A.D.)²

Canon 6.

Hi quoque qui alienis uxoribus, superstitibus ipsarum maritis, nomine conjugii abutuntur, a communione habeantur extranei.

¹ Mansi, tom. xiv. p. 1009.² *Ibid.* tom. vii. p. 901.

COUNCIL OF VANNES.

(Concilium Veneticum, circa 465 A.D.)¹*Canon 2.*

Eos quoque qui relictis uxoribus suis, sicut in evangelio dicitur, excepta causa fornicationis, sine adulterii probatione alias duxerint, statuimus a communione similiter arcendos: ne per indulgentiam nostram praetermissa peccata alios ad licentiam erroris invitent.

COUNCIL OF AGDE.

(Concilium Agathense, 506 A.D.)²*Canon 25.*

Hi vero saeculares, qui conjugale consortium culpa graviore dimittunt vel etiam dimiserunt, et nullas causas discidii probabiliter proponentes, propterea sua matrimonia dimittunt, ut aut illicita, aut aliena praesumant; si antequam apud episcopos comprovinciales discidii causas dixerint, et prius uxores, quam iudicio damnentur, abjecerint; a communione ecclesiae, et sancto populi coetu, pro eo quod fidem et conjugia maculant, excludantur.

SECOND COUNCIL OF ORLEANS.

(Concilium Aurelianense II., 533 A.D.)³*Canon 11.*

Contracta matrimonia accedente infirmitate nulla voluntatis contrarietate solvantur. Quod si qui ex conjugibus fecerint, noverint se communione privandos.

COUNCIL OF NANTES.

(Concilium Namnetense, "prob. 658 A.D.")⁴*Canon 12.*

Si cujus uxor adulterium perpetravit, et hoc a viro deprehensum fuerit et publicatum, dimittat uxorem, si voluerit, propter fornicationem: illa vero septem annis publice poeniteat. Vir vero ejus illa vivente nullatenus aliam accipiat. Quod si voluerit adulteram sibi reconciliare, licentiam habeat: ita tamen, ut pariter cum illa poenitentiam agat, et exacta poenitentia, post septem annos ad communionem uterque accedat. Similis forma et in muliere servabitur, si eam vir ejus adulteravit.

¹ Mansi, tom. vii. p. 953.² *Ibid.* tom. viii. p. 329.³ *Ibid.* tom. viii. p. 837.⁴ *Ibid.* tom. xviii. p. 169.

TWELFTH COUNCIL OF TOLEDO.

(Concilium Toletanum XII., 681 A.D.)¹

Praeceptum domini est, ut excepta causa fornicationis, uxor a viro dimitti non debeat. Et ideo quicumque citra culpam criminis praedicti, uxorem suam quacunque occasione reliquerit, quia quos Deus jungit, ille separare disposuit, tandiu ab ecclesiastica communicatione privatus, et a coetu omnium Christianorum maneat alienus, quamdiu, et ad societatem relictæ conjugis redeat, et partem sui corporis honesta lege conjugii sinceriter amplectatur et foveat. Hi tamen, qui jam admoniti a sacerdote semel et bis terque ut corrigantur, ad tori sui conjugii noluerunt redire consortium, ipsi se suis meritis, et a palatinae dignitatis officio separabunt, et insuper generosae dignitatis testimonium, quamdiu in culpa fuerint, amissuri sunt; quia carnem suam discidii jugulo tradiderunt.

COUNCIL OF SOISSONS (744 A.D.).

(Pippini Principis Capitulare Suessionense, a. 744.)²*Canon 9.*

Similiter constituemus, ut nullus laicus homo Deo sacrata femina ad mulierem non habeat, nec suam parentem; nec marito viventem sua mulier alius non accipiat, nec mulier vivente suo viro alium accipiat, quia maritus muliere sua non debet dimittere excepto causa fornicationis deprehensa.

COUNCIL OF VERBERIES.

(Pippini Regis Capitulare Vermeriense, a. 753.)³*Canon 2.*

Si aliquis cum filiastra sua manet, nec matrem nec filiam ipsius potest habere, nec ille nec illa aliis se poterunt conjungere ullo unquam tempore. Attamen uxor ejus, si ita voluerit, si se continere non potest, si postea quam cognovit quod cum filia sua vir ejus fuit in adulterio, carnale commercium cum eo non habet, nisi voluntate se abstinet, potest alio nubere.

¹ Mansi, tom. xi. p. 1034.² *Monumenta Germaniæ Historica.* Legum, tom. i. p. 21.³ *Ibid.* tom. i. p. 22.

Canon 5.

Si qua mulier mortem viri sui cum aliis hominibus consiliavit, et ipse vir ipsius hominem se defendendo occiderit, et hoc probare potest, ille vir potest ipsam uxorem dimittere, et si voluerit, aliam accipiat. [Ipsa¹ autem insidiatrix, poenitentia subacta, absque spe conjugii maneat.]

Canon 9.

Si quis necessitate inevitabili cogente in alium ducatum seu provinciam fugerit, aut seniore suum, cui fidem mentiri non poterit, secutus fuerit; et uxor eius, cum valet et potest, amore parentum aut rebus suis, eum sequi noluerit, ipsa omni tempore, quamdiu vir ejus, quem secuta non fuit, vivet, semper innupta permaneat. Nam ille vir ejus, qui necessitate cogente in alium locum fugit [si¹ nunquam in suam patriam se reversurum sperat], si se abstinere non potest, aliam uxorem cum poenitentia potest accipere.

Canon 17.

Si qua mulier se reclamaverit, quod vir suus nunquam cum ea mansisset, exeant inde ad crucem; et si verum fuerit, separentur, et illa faciat quod vult.

Canon 21.

Qui uxorem suam dimiserit velare, aliam non accipiat.

COUNCIL OF COMPIÈGNE.

(Pippini Regis Capitulare Compendiense, 757 A.D.)³

Canon 9.

Homo Francus accepit beneficium de seniore suo, et duxit secum suum vassallum, et postea fuit ibi mortuus ipse senior, et dimisit ibi ipsum vasallum; et post hoc accepit alius homo ipsum beneficium, et pro hoc ut melius potuisset habere illum vassallum, dedit ei mulierem de ipso beneficio, et habuit ipsam aliquo tempore; et dimissa illa, reversus est ad parentes senioris sui mortui, et accepit ibi uxorem, et modo habet eam. Diffinitum est, quod illam quam postea accepit, ipsam habeat.

¹ Haec desunt in 1, 2.

³ *Monumenta Germaniae Historica.* Legum, tom. i. 27.

Canon 10.

Si quis, uxore accepta, invenit eam a fratre suo contaminatam, ipsam dimittens accepit aliam, ipsamque contaminatam invenit, uxor illius legitima est, propterea quia nec ipse virgo fuit illo tempore. Quod si tertiam postea acceperit, revertat ad medianam; et ipsa posterior potestatem habeat alio viro se conjungere.

Canon 11.

Si quis homo habet mulierem legitimam, et frater ejus adulteravit cum ea, ille frater vel illa femina qui adulterium perpetraverunt, interim quo vivunt numquam habeant conjugium. Ille cujus uxor fuit, si vult, potestatem habet accipere aliam.

Canon 15.

Si quis filiastrum aut filiastram ante episcopum ad confirmationem tenuerit, separetur ab uxore sua, et alteram non accipiat. Similiter et femina alterum non accipiat. [*Georgius consensit.*]

Canon 16.

Si quis vir mulierem suam dimiserit, et dederit commeatum pro religionis causa infra monasterium Deo servire, aut foras monasterium dederit licentiam velare, sicut diximus, propter Deum, vir illius accipiat mulierem legitimam. Similiter et mulier faciat. [*Georgius consensit.*]

Canon 17.

Si quis cum matre et filia in adulterio mansit, nesciente matre quod cum filia sua mansisset, similiter et filia nescivit quod cum matre sua esset, postea ille vir si acceperit mulierem, dimittat, usque in diem mortis suae non habeat uxorem, et illa mulier quam reliquerit, accipiat virum; et illa mater et filia, cum quibus in adulterio mansit, ambabus nescientibus quod cum patre et filia mansisset, habeant viros. Nam si in notitiam illarum venerit hoc scelus, dimittant maritos, et agant poenitentiam, et illorum mariti posteriores accipiant mulieres.

Canon 19.

Si vir leprosus mulierem habeat sanam, si vult ei donare commeatum ut accipiat virum, ipsa femina, si vult, accipiat. Similiter et vir.

Canon 20.

Si quis vir accepit mulierem, et habuit ipsam aliquo tempore, et ipsa femina dicit quod non mansisset cum ea, et ille vir dicit quod sic fecit, in veritate viri consistat, quia caput est mulieris. De muliere quae dicit, quod vir suus ei commercium maritale non reddidit, Georgius consensit.

Canon 21.

Si qui propter faidam fugiunt in aliam patriam, et dimittunt uxores suas, nec illi viri nec illae feminae accipiant conjugium [*Georgius consensit.*¹]

SYNOD OF AACHEN (789 A.D.).

(Karoli Magni Capitularia. Capitulare ecclesiasticum, a. 789.)²

Canon 43. Omnibus.

Item in eodem (concilio Africano),³ ut nec uxor a viro dimissa alium accipiat virum, vivente viro suo, nec vir aliam accipiat vivente uxori priore.

SIXTH COUNCIL OF PARIS.

(Concilium Parisiense VI., 829 A.D.)⁴

Lib. iii. cap. 2.

Et quod nisi caussa fornicationis, ut Dominus ait, non sit uxor dimittenda, sed potius sustinenda. Et quod hi, qui caussa fornicationis dimissis uxoribus suis alias ducunt, Domini sententia adulteri esse notentur.

SYNOD OF WORMS (829 A.D.).

(Hludowici et Hlotharii Capitularia. Constitutiones Wormatienses.)⁵

De his quae populo adnuntianda sunt. (Repeats verbatim from the 6th Council of Paris.)

HLOTHARII I. EXCERPTA CANONUM.⁶

Concilii mense Novembri anni 826 ab Eugenio papa Romae celebrati canones 36, 37, 19, 38 et 33 in codicibus legum Langobardorum scilicet Ambrosiano, Florentino, Londinensi, Vindobonensi, Veronensi et Estensi inter Hlotharii leges referuntur.

Nulli liceat excepta causa fornicationis, &c. (Repeats c. 36 of the Synodus Romana.)

¹ In diluculo, *cod.*

² *Monumenta Germaniae Historica.* Legum, tom. i. p. 61.

³ *Comp. Afr. Can.* 69.

⁴ Mansi, tom. xiv. p. 596.

⁵ *Monumenta Germaniae Historica.* Legum, tom. i. p. 345.

⁶ *Ibid.* tom. i. p. 372.

THIRD COUNCIL OF AACHEN.

(Concilium Aquisgranense III., 862 A.D.)¹

In caussa Theutbergae, uxoris Lotharii regis, in quo permissum est Lothario, ut aliud conjugium iniret.

Cap. 10.

De cetero his atque hujusmodi canonicis sanctionibus, et sancti patris Ambrosii oraculis liquido perspectis, credimus non illam fuisse idoneam, aut legitimam conjugem, neque a Deo praeparatam esse uxorem quae publica ut dictum est confessione incestuoso fornicationis crimine denotata probatur. Quocirca glorioso principi nostro, pro sua in Divino cultu devotissima affectione, atque victoriosissima regni tuitione, cui non solum nos, verumetiam canonica auctoritas incestuosum conjugium interdicat, legitimum atque idoneum conjugium a Deo illi concessum non denegamus, juxta indulgentiam dicentis apostoli; *Melius est nubere quam uri.*

COUNCIL OF BOURGES.

(Concilium Bituricense, 1031 A.D.)²

Canon 16.

Ut qui uxorem sine culpa fornicationis dimiserit, alteram illa vivente non ducat.

Ut illi qui uxores legitimas sine culpa fornicationis dimittunt, alias non accipiant illis viventibus, nec uxores viros, sed sibimet reconcilientur.

COUNCIL OF RHEIMS.

(Concilium Remense, 1049 A.D.)³

Canon 12.

Ne quis legitima uxore derelicta aliam duceret.

COUNCIL OF TOURS.

(Concilium Turonense, 1060 A.D.)⁴

Canon 9.

Quicumque consanguineam suam, aut quam consanguineus suus prius cognoverat, aut ejus consanguineam carnaliter in conjugium accepit, vel deinceps acceperit; vel postquam cognovit, non statim dimisit, aut cognoscens non dimiserit; aut qui uxorem alterius rapuit, seu rapuerit; vel qui suam uxorem sine judicio episcopali dimittens,

¹ Mansi, tom. xv. p. 613.² *Ibid.* tom. xix. p. 505.³ *Ibid.* p. 742.⁴ *Ibid.* p. 928.

aliam duxit, vel duxerit: donec se fructuose tradat poenitentiae, a corpore et sanguine domini nostri Jesu, et a liminibus ecclesiae se exclusum, et alienatum, et omnimodis sicut putridum membrum a sano corpore praecisum gladio spiritus, quod est verbum Dei, agnoscat.

BENEDICTUS LEVITA.

(Quoted by Freisen, p. 793.)

Lib. III. 73.

Ut vivente viro vel uxore nemo eorum alteri conjugio copuletur.

III. 179.

Et si fornicata fuerit et vir ejus voluerit, dimittenda, sed illa vivente altera non ducenda, quia adulteri regnum Dei non possidebunt et poenitentia illi accipienda.

II. 235.

Et ut causa fornicationis non sit uxor secundum Domini sententiam dimittenda sed potius sustinenda. Et quod hi, qui causa fornicationis dimissis uxoribus suis alias ducunt, Domini sententia adulteri esse notantur.

PSEUDO-ISIDORE.¹

(Ps-) *Exaristus urbis Romae episcopus.* Omnibus per Ægyptum domino conglutinatis fratribus in domino salutem.

Cap. iv.

Et sicut vir non debet negligere uxorem suam, sed diligere et caste custodire et amare atque prudenter regere, sic episcopus debet ecclesiam suam, quia illud fit carnaliter, istud spiritualiter; et sicut vir non debet adulterare, ita nec episcopus ecclesiam suam, id est, ut illam dimittat ad quam sacratus est, absque inevitabili necessitate aut apostolica vel regulari mutatione, et alteri ambitus causa conjungat. Ut uxor viro suo reconciliet, et sicut uxori non licet dimittere virum suum, ut alteri se vivente eo matrimonio sotiet aut eum adulteret licet fornicatus sit vir ejus, sed juxta apostolum aut viro suo debet reconciliari aut manere innupta: ita ecclesia non licet dimittere aut ab ea se segregare episcopum suum, ut alterum vivente eo accipiat, sed aut ipsum habeat aut innupta maneat, id est, ne alterum episcopum vivente suo accipiat, vel fornicationis aut adulteri crimen incurrat.

¹ Ed. *Hinschius*, p. 90.

(GRATIAN'S DECRETUM (CONCORDANTIA DISCORDANTIUM CANONUM)).¹

C. 32. q. 7.

c. 1. Vinculum conjugii fornicatione dissolvi non potest.

c. 2. Nulla ratione dissolvitur conjugium quod semel initum probatur.

c. 3. Sive vir ab uxore, sive uxor a viro causa fornicationis discesserit, alteri adhaerere prohibetur.

c. 6. Moechatur qui a viro dimissam ducere praesumit.

c. 7. Adultera probatur, quae vivente marito alteri nubit.

Dictum to c. 16.

His auctoritatibus evidentissime monstratur, quod quicumque causa fornicationis uxorem suam dimiserit, illa vivente aliam ducere non poterit, et, si duxerit, reus adulterii est.

In the western half of what had once been the undivided Roman Empire the history of the laws of marriage ran an altogether different course from that which it followed in the east. In the east the Empire was all-dominant, the Church humbly submissive. In Italy, and ultimately throughout the West, it was the Church which tended to be dominant in all matters having ecclesiastical relations, while the various and fragmentary secular dynasties which succeeded one another in what have been known as the "dark ages" found themselves, sooner or later, forced in such matters to accept the teaching and submit to the sway of the Church. Long before the legislation of Justinian had begun to leaven the old Roman law at Constantinople with directly Christian influences, many of the provinces of the West had been torn away from the Empire by the inroads of barbarian invaders. These invaders, when settled in the conquered provinces, had to face the fact of the system of law under which their new subjects lived, and the principle which they appear to have commonly adopted is the principle which, in recent times, the British Government has adopted in India, that is to say, the recognition of personal law.² Just as in India at the present time the British Government permits the Hindu to live under the protection of the

In the West the secular dynasties had to accept the teaching of the Church.

¹ Friedberg, *Corpus juris canonici*, 1879-1881. Quoted by Freisen, pp. 802 sq.

² Ortolan, *History of Roman Law*, para. 529; Eng. tr. p. 432.

The subjects of the German kings were under personal law. The codes of the Roman subjects of the German kings.

Hindu law, and the Mussulman under the law of the Koran—modified only so far as is rendered necessary by the relations of these sections of the community to one another and to the whole empire—so the German kings adopted the principle of judging every man according to the laws of the race to which he belonged. In pursuance of this policy they found it necessary to promulgate, besides their own Teutonic laws, certain codes of Roman law, which they were prepared to recognise as the law of all Romans within their dominions. There are three such Roman Codes promulgated by German kings:

1. The *Lex Romana Visigothorum*, or *Breviarium Alarici* (decreed at Aire, in Gascony, 506 A.D.).

2. The *Lex Romana Burgundionum* (517 A.D.)

3. The *Edictum Theodorici* (according to Savigny, 500 A.D.), which was in force among the Ostrogoths in Italy.

These various codes were intended at once to meet the difficulties which arose from the confused state into which the Roman law had fallen,¹ and to adapt that law, where necessary, to the new conditions of the Teutonic rule. The confusion of the Roman law itself was at this time very great. Ortolan says: "The plebiscita of ancient Rome, the senatus-consulta, the edicts of the prætors, the numerous books of the authorized jurists, the codes of Gregorian, of Hermogenian, of Theodosius, the constitutions of all the emperors who had come after him, texts accumulated, confused, and contradictory, formed altogether a real legislative chaos."²

It was to such a condition of the law that in the east Justinian's admirable legislation succeeded. The Code, the Digest, and the Institutes all appeared at Constantinople between A.D. 529 and A.D. 534. At first they had no authority in Italy, where, under barbarian rule, the Edict of Theodoric was the recognised code in force. But the reign of Justinian, besides being the era of legislative order, was the era of the reconquests of Belisarius and Narses; and in A.D. 554, or only twenty years after the promulgation of the new Code in

¹ See the *Commonitorium* of the Visigothic Code, which speaks of the "legum Romanarum et antiqui juris obscuritas."

² Ortolan, *History of Roman Law*, para. 535; Eng. trans. p. 441.

A.D. 534, it was possible by a pragmatic sanction to extend the operation of the Code to the courts of Italy. For three centuries from this time the Byzantine Empire was able to maintain a more or less precarious foothold in the Italian peninsula, but long before the last Greek soldier was finally driven across the Adriatic the power of the Justinianian legislation in Italy had found a stronger basis in the support of the clergy than it was ever again to find in the secular authority of the East.¹ Amid the chaos of many masters the *forum externum* of the bishop, which appears to have existed from the first for penitentiary purposes, acquired every day more of the character of a recognised and coercive jurisdiction—a tendency which was doubtless very largely due to the express recognition of such courts by the Code in the case of litigants who voluntarily submitted to them. Thus a Constitution of Arcadius and Honorius² allows the parties in civil suits to go before the bishop as arbitrator, and a Constitution of Honorius and Theodosius³ orders that the judgment of the bishop shall be binding on all those who have chosen him as judge, and that it shall have as much force as a judgment of the praetorian prefect, from whom there could be no appeal. An early and interesting case of this jurisdiction of the bishop has been already referred to in connexion with S. Innocent I., who gave his decision, “the Catholic Faith supporting” him, while referring at the same time to the corroborative force of the secular law. It does not indeed appear that in the administration of the Roman law the court of the bishop could ever claim coercive jurisdiction in ordinary civil cases, over any except those who voluntarily submitted to it; but it is notwithstanding a fact that in Italy the court of the bishop, and especially the court of the Pope, came to be the most prominent of legal tribunals. The permission accorded to their jurisdiction was doubtless due in great measure to the consciousness of the civil legislators

The code
of
Justinian
in the
courts of
Italy.

The *forum*
externum
of the
bishop.

¹ On the influence of the clergy compare Ortolan, *History of Roman Law*, sec. 121, paras. 600-603; and Allies, *The Holy See and the Wandering of the Nations*, pp. 256 *sqq.*

² Cod. I. iv. 7.

³ *Ibid.* 8.

that Christians, who wished to live in full communion with the Church, had to acknowledge stricter bonds than the civil law cared to impose; and we find, in fact, that the law administered by the ecclesiastical tribunals recognised a certain "Canon Law," as it afterwards came to be called, as well as, and in preference to, the civil legislation of the empire. These ecclesiastical tribunals may indeed be said to have conducted their administration consistently on two principles:

(1) That the recognised Constitutions, Canons, and Usages of the Christian Church were to be counted as above all other law, and that wherever any secular legislation was contrary to the ecclesiastical, such secular legislation should be disregarded.

(2) That, subject to this provision, the Civil Code of Justinian was to be loyally applied in the secular affairs of life.¹

The result of the application of these two principles in the matter of the laws of marriage was that the regulations of Justinian upon the subject were never the rule of the West. The churches of Italy, which were immediately connected with the Roman See, administered the Christian law, soon to be known as the Canon law of marriage; while the communities beyond the Alps, who were not freed from the secular jurisdiction in marriage questions, were still under the provisions of the Roman Codes of the German Emperors, or under the old German and Frankish laws. The conflict between these secular systems and the Christian Church in the ultramontane territories will be presently noticed; but it will be convenient to examine first the traditions of Italy, and especially of the Roman See.

(i.) *Italy.*

S. Gregory the Great. Divorce for the purpose of entering the monastic life not permitted.

S. Gregory the Great (bp. from A.D. 590 to A.D. 604), condemning the laxity of the secular law in the matter of divorce, says that "it must be understood that, although human law has conceded this, yet the Divine law has forbidden it."² The case he is considering is the case of a married person who should wish to take monastic vows, and leave his partner in

¹ Ortolan, *History of Roman Law*, paras. 601, 602.

² S. Gregory the Great, *Epist.* lib. xi. 45.

the world. In a particular case of the same mistaken practice which had been submitted to him he expresses himself in a similar sense: "Because although the secular (*mundana*) law provides that for the sake of monastic consecration (*conversio*) marriages may be dissolved, notwithstanding the unwillingness of one of the parties, yet the Divine law does not permit this to be done. For, the cause of fornication excepted, a man is permitted on no ground to put away his wife, because after that by the copulation of marriage there results one body of the man and of the woman, that body cannot be partly bound to monastic obligations and partly left in the world."¹

S. Gregory then understands that there is only one cause which permits putting away, and he is conscious that there is a grave difference between the secular law and the Christian law on the subject of divorce. He does not appear to touch the subject of remarriage after divorce for fornication. Presumably he accepted the traditional attitude of the Roman Church.

Gregory II., in the Instructions which he gave to the ambassadors whom he sent into Bavaria in A.D. 716, thus writes: "Thou art bound to a wife, seek not to be loosed"; that is to say, while thy wife is alive desire not to pass over to *concubitus* with another woman."² Gregory II. is, on the whole, at one with all his predecessors and successors in the Roman See: but a remarkable letter to S. Boniface in 726 A.D., the genuineness of which is above question, concedes remarriage in a particular case of separation. Where the wife, overcome by infirmity, (*infirmirate correpta*) can no longer admit conjugal intercourse, the husband may be permitted to marry again during her lifetime. This concession on the part of Gregory II. is perhaps the only instance in the whole long line of Roman pontiffs of a failure to maintain the primitive principle of the indissolubility of Christian marriage.³ As such it was felt by Gratian to be an extraordinary difficulty when, in the twelfth century, he came to compile the celebrated *Decretum*, which codified the Canon Law of Western Christendom, and is still

Gregory II.,
Against
divorce
with re-
marriage,

but a
remarkable
exception,
when the
wife is
"infirmi-
tate
correpta."

¹ S. Gregory the Great, *Epist.* lib. xi. 45. ² Gregory II., *Capitulare*.

³ *Gregorius II. papa ad varias Bonifatii consultationes.*

the largest portion of the *Corpus Juris Canonici*. He remarks, "That passage of Gregory is found altogether opposed to the sacred canons, nay, even to the evangelical and apostolical doctrine,"¹ and endeavouring to glose over it he remarks that it was only a temporary permission to the English.² (It was S. Gregory I. who had written to the English; the letter of Gregory II. had reference to the Germans.)

Influence of
Theodore.

The most probable explanation of a judgment which was not only at variance with the traditions of the Roman see, but also, as it would seem, with Gregory's own instructions just noticed, is that he allowed himself here to be overborne by the authority of the great name of Theodore of Canterbury, whose Penitential appears to have been published in the early years of the eighth century. Theodore, as will be seen in the next section, permitted the various lax indulgences which were in vogue in the East, and also, contrary to Eastern practice, admitted divorce for supervenient infirmity. Gregory may not indeed have been prepared to accept all the marriage clauses of Theodore's Penitential, but he may have been the more ready to accept this particular provision on the ground of an obvious though misleading analogy. It was shewn in a former chapter that in practice the Church has always admitted that where there was, *ab initio*, no copula, there was no completed marriage. Throughout Christendom it has been, and is still, the rule in such cases to decree nullity of marriage on application; but in the case conceded by Gregory the bond of marriage subsisted by virtue of the completed union of the earlier wedded life, and to sever it was to decree divorce and to surrender the principle of the indissolubility of Christian marriage.

Zacharias.

Pope Zacharias, writing to Pippin, Mayor of the Palace, in 747 A.D.—at a time when arguments on the question of divorce were running high in the Frankish kingdom—quotes two ancient canons, first, the 48th Apostolical Canon, and next the 102nd Canon of the African Code. Both of these canons,

Re-
marriage
disallowed.

¹ *Decretum*, c. 18, c. 32, q. 7.

² *Ibid.* c. 24.

as shewn above, forbid remarriage after divorce. Pope Zacharias, therefore, endorses this prohibition.¹

The Council of Friuli, held in 791 A.D. under Paulinus of Aquileia, has a long and interesting canon on the subject. Council of Friuli.
 "It was decreed that when the marriage bond is loosed because of fornication the husband may not lawfully take another wife so long as the adulteress lives, nor may she take another husband, whether he whom she hath shamelessly wronged be living or dead." The canon proceeds to refer to S. Matthew xix. 9 as a difficult passage, and states that the works of S. Jerome have been diligently searched for his exposition of its meaning, with the result that "it became immediately evident that the clause relates solely to the permission to put away."² Re-marriage disallowed to both.
S. Matt. xix. 9.

A canon which was passed in the Council of Rome under Eugenius II., in A.D. 826, and confirmed in another Roman Council under Leo IV., in A.D. 853, is of doubtful interpretation. Council of Rome.
 "No man, except for the cause of fornication, may leave the wife who is joined to him, and then unite with another. In other cases it is expedient that the transgressor be united in his former wedlock."³ It has been generally held by later expositors that this canon is a clumsily-worded enactment, in which there was no intention to overthrow the traditional teaching of the Roman Church. Persons who had separated without the justification of unfaithfulness ought to come together again. If the justification existed they might remain apart; nor was remarriage permitted. The canon goes on to lay down that even for the object of entering the "religious life" mutual consent is a necessary condition of separation. It must be admitted that this canon, except for the grave improbability that an unnoticed pronouncement of the Roman Church should contradict the continuous tenour of its traditions, might well be read to sanction remarriage after divorce for fornication. Canon of doubtful interpretation.

¹ *Zachariæ Papæ Epistola vii. ad Pipinum Majorem Domus itemque ad episcopos, abbates et procures Francorum.*

² *Concilium Forojuliense, 791 A.D. (Mansi, tom. xiii. p. 849).*

³ *Synodus Romana, 826 A.D. (Mansi, tom. xiv. p. 1009.)*

Nicholas I., after the third Council of Aachen (862 A.D.) had disgraced itself by its cowardly concession of remarriage to Lothair on the ground of the adulterous incest of his wife, excommunicated all those who had taken part in the Council. He must be understood to reject remarriage after divorce for adultery.¹

In Italy the indissolubility of marriage was maintained.

Summing up the traditions of the Roman Church for the second five centuries of Christianity, it may be said that they consistently maintained the early traditions of the indissolubility of Christian marriage with only one certainly discordant utterance; viz., the judgment of Gregory II. in the case of supervening infirmity. The peculiar position of the episcopal courts as authorized tribunals, in a condition of affairs where all secular authority was in a state of flux, had the effect of making the strict tradition of the Roman Church the only admitted law of marriage in the Italian peninsula.

(ii.) *The Churches beyond the Alps.*

Two systems of personal law.

For the proper understanding of the canons affecting marriage in the Churches beyond the Alps, it is necessary to recall the provisions of the secular law. As has been noticed, the Frankish and German monarchs ruled on the system of recognising the personal law of each individual subject. Consequently throughout the regions in which the power of the Western emperors in the so-called dark ages was most real and actual, we find the people living under two main systems of law. Those who accepted the Roman system were judged by the Roman codes of the German kings. The rest continued under the native German or Frankish systems, customary or other.

The Roman codes retained the faculty of divorce by consent.

By the Roman codes, which, it must be remembered, were not superseded in Western Europe by the legislation of Justinian, the faculty of divorce by mutual consent remained. Thus in the *Lex Romana Burgundionum* it is enacted that "by the consent of both parties *repudium* may be given and marriage may be dissolved."² The *Lex Romana Visigothorum*

¹ Mansi, tom. xv. p. 625, note.

² *Lex Romana Burgundionum*, tit. 21, c. 1, quoted by Freisen, *Can. Eherecht*, p. 777.

is not so explicit on this point, though nothing is said with a view to take away the existing license, while a formula of divorce has come down to us which was in use in the territory covered by this code, and which plainly recognises mutual consent as a sufficient ground, "inasmuch as between him and her, his wife, there reigns not charity according to GOD, but discord, and they have no desire of equal conversation, it has pleased *both their wills* that they should separate from conjugal association, which accordingly they have done."¹

In the case of a suit for divorce instituted by one party without the consent of the other, the man might divorce his wife, as under the older Roman legislation, if she were (*a*) an adulteress, (*b*) a poisoner, or (*c*) a procuress; while the wife might divorce her husband if he were (*a*) a homicide, (*b*) a criminal (*maleficus*), or (*c*) a violator of tombs. The wife might not divorce her husband on the ground of his fornication with other women, or in the case of drunkenness or of other excess.² If either party insisted on a divorce, though not able to allege what the law regarded as an adequate ground, the divorce does not seem to have been void, but it was attended by the infliction of penalties.

Those subjects of the Western rulers who elected to live under the old local systems of law appear to have had an equal facility in the matter of divorce. Thus the laws of the Alemanni permitted separation without further ado where the parties desired it, prescribing a division of chattels.³ In the law of the Visigoths, however, consensual divorce was restricted under Chindaswind (642-653 A.D.) to the case of both parties entering the religious life—a case in which the divorce was to be of service, not for the dissolution of the bond, but only for separation of life.⁴ This restriction is clearly the result of Christian teaching.

Where the divorce was sought by one party only, the German system admitted certain specified grounds of divorce.

¹ Form. Symond. 19, quoted by Freisen, *Can. Eherecht*, p. 777.

² Haenel, *Lex Romana Visigothorum*, p. 94, quoted by Freisen, *Can. Eherecht*, p. 777.

³ *Lex Alem.* Pactus iii. 2, quoted by Freisen, *Can. Eherecht*, p. 779.

⁴ *Lex Visigoth.* iii. 6, c. 2, *ibid.*

Divorce for offences as under the older Roman legislation.

The Frankish and German laws.

Equal facilities of divorce.

Thus the *Lex Visigothorum* specifies the adultery of the wife.¹ In the *Lex Burgundionum* divorce was admitted, much after the model of the Roman codes, if the woman was an adulteress, a criminal (*malefica*), or a violator of tombs.² With the Lombards the grounds of divorce were (1) adultery, (2) immodest behaviour with a third person, (3) attempts upon life. With the Bavarians and Allemanni *vitium* was a ground of divorce, that is to say, some crime by which the honour of the wife was stained. Sometimes divorce took effect by the sole procedure of the husband, without ground alleged; but such divorce carried with it penalties.³ Generally speaking, the wife did not possess the right to divorce her husband except with his consent, even if he were guilty of adultery. By the law of the Burgundians a woman who deserted the husband to whom she had been lawfully married was punishable by death.⁴

Conflict
of the
Church
with the
secular
laws.

Conditions
more
favourable.

From this brief review of the secular laws of marriage in the more westerly portion of Europe it will be seen that the Christian Church had there much the same conflict to wage with the various secular systems as the Eastern Church had to carry on against the Roman civil law. The conflict has left its marks, and the canons of the local councils and other records will shew how in these Western countries, as in the East, the Church sometimes felt the pressure of present authority and custom to be too great for primitive practice and strict Church feeling. But the conditions of the conflict were more favourable to the Church in the West than they were proving in the East. On the one hand there was an independent authority in the see of Rome to which appeal could be made; on the other the civil jurisdiction lacked the unity and weight of the civil system of the East. The results were accordingly altogether different. In the East, as has been seen, the Church overcame the license of divorce by mutual consent, but practically gave way on nearly all other

¹ *Lex Visig.* iii. 6, c. 2, quoted by Freisen, p. 779.

² *Lex Burg.* 34, 3, *ibid.*

³ *Lex Bajuuv.* viii. 14; *Pact. Alem.* iii. 3, *ibid.*

⁴ *Lex Burg.* 34, 1, quoted by Freisen, p. 780.

points. In the West, while there are occasional yieldings during the period of conflict, the Church ultimately conquered all along the line. Yet it was not till the tenth and eleventh centuries that this victory can be said to have been finally won.

For the most Western countries of Europe the era of Justinian does not supply, as in the East, and even in Italy, a natural halting-place. It will be convenient here to disregard the division of time hitherto adopted, and, for the evidence of what may be called distinctively Frankish tradition, to go back behind Justinian. The Councils of Angers (453 A.D.), of Vannes (465 A.D.), and of Agde (506 A.D.) will be better considered here than would have been the case if they had been treated together with the teaching of S. Jerome, S. Augustine, S. Innocent I., and S. Leo the Great.

Some
Western
Councils
before
Justinian
may be
considered
here.

The Council of Angers, held in 453 A.D., on the occasion of the consecration of Talasius as bishop, was able to take its stand as a Christian council, to which the secular laws were only the laws of a community still predominantly non-Christian. Hence the canon on remarriage after divorce is the untroubled utterance of early Christian conviction. "They also who under the name of marriage abuse other men's wives while the husbands are still living are to be held excluded from communion." By the secular law such unions were open to any, and went by "the name of marriage"; but the Christian Church knew nothing of such marriages, and excommunicated the offenders.¹

Council of
Angers.

At Vannes in 465 A.D., or twelve years after the Council of Angers, a council was held under the presidency of the metropolitan S. Perpetuus of Tours, on the occasion of the consecration of S. Padarn, the first British bishop of Brittany, who was appointed to the See of Vannes. All those who avail themselves of the secular law to divorce their wives and marry others are excluded from communion, with the sole exception of those who can prove the wife's adultery. The Council of Vannes therefore does not reject from communion the innocent husband who has put away his wife for adultery

Council of
Vannes.

¹ *Concilium Andegavense*, 453 A.D. (Mansi, tom. vii. p. 901.)

and afterwards married again; but the spirit of the canon is not to be found so much in the permitted exception as in the general condemnation. Evidently it was felt by the fathers that their action would seem harsh, and require to be justified, for they add, "Lest sins passed over by our indulgence invite others to the license of error." It should be remembered that although the town and district of Vannes were probably more affected by British custom than by Frankish law, the bishops who formed the council, with the sole exception of S. Padarn himself, were bishops of Frankish Sees. The council is therefore doubtless dealing chiefly with the lax habits of Christians who availed themselves of the indulgence of the Frankish secular laws.¹

Council
of Agde.

The Council of Agde in Narbonne, which was held in 506 A.D. "by the permission of our most glorious and magnificent lord king," that is, Alaric, shows at the same time a condition of conflict with current laxity of usage as sanctioned by the secular law, and a tendency on the part of the Church to meet such laxity half-way by considerable concessions. "Those secular persons, who are dissolving or have actually dissolved their conjugal fellowship for (no) grave fault, and who allege no probable grounds of divorce on account of which they are dissolving their marriages; and do this that they may presume to unlawful or at least alien connexions: (be it resolved) that if such put away their wives before they have alleged the grounds of divorce in the presence of the comprovincial bishops, and before the wives have been judicially condemned, they are to be excluded from the communion of the Church, and from the holy assembly of the people, because they are staining both their faith and their marriage unions." The license of the secular laws is thus in no wise to be upheld; but there are grounds which, if alleged and proved before the comprovincial bishops, would justify divorce, and evidently also remarriage. One such ground would be adultery, and it is possible that other grounds would have been entertained.²

The next council to be noticed is that of Orleans, which was

¹ *Concilium Veneticum*, circa 465 A.D. (Mansi, tom. vii. p. 953.)

² *Concilium Agathense*, 506 A.D. (Mansi, tom. viii. p. 329.)

held in 533 A.D. at the desire of Childebert and his royal brothers. This council has a canon against divorce for supervenient infirmity, apparently in the sense of insanity: "Contracted marriages are not to be dissolved, if infirmity supervene, by reason of any contrariety of the will. If any married persons shall have done this, let them know that they are to be deprived of communion."¹ This appears to be an echo of a provision which, doubtless under Christian influences, had found place in the secular system. The West-Gothic interpretation of the *Lex Romana Visigothorum* lays down that "if any persons being sane have contracted marriage, and insanity or madness have supervened in the case of one of the two, the marriages of such persons cannot be dissolved on account of this infirmity." It is noticeable that this interpretation goes much farther than the *Lex Romana Visigothorum* itself, which simply rules that supervenient insanity does not dissolve a marriage *ipso facto*, and leaves the right of divorce intact.²

Council of
Orleans.

The Council of Nantes appears in Mansi under the date of 658 A.D., but the canons bear internal evidence of a later date. The only ground indeed for assigning the canons to this date is derived from the comparison of two pieces of evidence; one, that Flodsard, a canon of Rheims in the tenth century, speaks of a council of Nantes at this date; and the other, that in the ninth and following centuries these 20 canons were commonly quoted as having been passed at Nantes. It was concluded therefore that they were passed in 658 A.D. Whatever the true date of the canons may be, perhaps the end of the eighth, or the beginning of the ninth century, they lay down that a man may indeed put away his wife for adultery, but that he may in nowise marry another during her lifetime.³

Council of
Nantes.

In 681 A.D. the Twelfth Council of Toledo was held under the presidency of Julian, metropolitan of Toledo. King Ervigius was present "to open the proceedings and make known his wishes"; and it may well be also that the bishops

Twelfth
Council of
Toledo.

¹ *Concilium Aurelianense II.*, 533 A.D. (Mansi, tom. viii. p. 837.)

² Freisen, p. 778, quoting Hänel, *Lex Rom. Visigoth.* p. 368.

³ *Concilium Namnetense* (Mansi, tom. xviii. p. 169.)

took occasion to utilise their transfer of allegiance from King Wamba to King Ervigius by emphasising Church regulations which were opposed to the secular provisions. "It is the precept of the Lord," says this Council,¹ "that a wife ought not to be dismissed by her husband, except for the cause of fornication." The Council proceeds to enact that any man leaving his wife for whatsoever reason (*quacunque occasione*) short of this is to be excluded from communion till he return to her. There is no mention of permission of remarriage to the innocent husband, in the one case in which he is permitted to put his wife away.

Council of
Soissons.

At the Council of Soissons in 744 A.D., which was attended by 23 bishops, it was decided in very ungrammatical Latin that in the case of a separation neither wife nor husband might marry again during the lifetime of the other partner, "because a husband ought not to dismiss his wife except on the ground of her being taken in fornication."² The case thus mentioned as permitting separation is not mentioned as an exception to the prohibition of remarriage. The decision of the council would be at variance with the secular law; but Pippin was entirely with the Frankish Church in its attempt to reform the morals of the people, and with that great object in view had perhaps not as yet noticed, or had held of little import, the contrariety of the laws of marriage. Into how terrible a state the Frankish Churches had at this time fallen may be gathered from a letter of S. Boniface to Pope Zacharias, written in 742 A.D., in which he describes the clergy themselves as guilty of the grossest immorality. The Council of Soissons was indeed an attempt at reformation, the impetus for which came entirely from without, first from S. Boniface, and then from Pope Zacharias. The canon we have quoted, which the degraded Frankish bishops were unable to express in the ordinary concords of grammar, was in truth, perhaps not so much the expression of their own convictions as the adoption of external suggestions, very possibly suggestions of S. Boniface himself. However this may be, the rulings of the Council do not appear

¹ *Concilium Toletanum* xii, 681 A.D. (Mansi, tom. xi. p. 1034.)

² *Monumenta Germaniae Historica*. Legum, tom. i. p. 21.

to have commanded obedience or carried conviction, for we find Pippin almost immediately afterwards referring questions to Pope Zacharias on the subject. The reply given by Zacharias in 747 A.D., or three years after the Council of Soissons, has been already noticed. There was to be no remarriage in any case of separation.

The councils which follow next shew that the Frankish Church, as it recovered something of external vitality, was by no means prepared to accept the full strictness of the Roman teaching on the subject of divorce. For eighty years prior to the Council of Soissons no council had been held, but nine years after it was held the Council of Verberies (A.D. 753), and three years after this again the Council of Compiègne (A.D. 756). The Council of Verberies (Vernon-sur-Seine) followed immediately upon the conclusion of Pippin's triumphant expedition against the Lombard power in Italy, when he seriously undertook the re-establishment of discipline and the reorganisation of the dioceses of France. In this council it was decreed that remarriage during the lifetime of the separated partner was in certain cases admissible. In cases of adulterous incest, where the sin was held to have introduced such a complication that the marriage relation itself ought not to continue, the innocent party was allowed to remarry. (c. 2.) Remarriage was equally permitted to the husband when the wife had conspired against his life. (c. 5.) A man who had left his country under the pressure of necessity, but whose wife wilfully declined to follow, might receive another wife, *cum poenitentia*, if he could not abstain. (c. 9.) The 17th canon lays down that the wife is not bound in the case of a marriage which is shewn not to have been consummated. The 21st canon rules that "a man who has dismissed his wife that she may take the veil is not to receive another."¹

Council of
Verberies.

The Council of Compiègne, held in King Pippin's palace in 756 A.D., may best be considered with that of Verberies. The 9th canon of Compiègne is a remarkable ruling. A

Council of
Compiègne

¹ *Monumenta Germaniæ Historica*. Legum, tom. i. p. 22.

Frank accepts a wife from his seigneur. After some time the vassal separates himself from his lord, and parts with his wife at the same time. He then takes another wife. The council decides that he is to keep the woman he took last (*illam, quam postea accepit, ipsam habeat*). The 16th canon permits a man whose wife has left him to enter a convent to marry again. In so doing it contradicts the Council of Verberies of three years before. It is noticeable that this unusual concession received the sanction of the Papal Legate. George of Ostia represented Pope Stephen III. at the council, and after each of the canons to which he accorded his assent the words *Georgius consensit* are appended. These words are not appended to the canons which concede remarriage in the cases of leprosy and of adulterous incest, but to the 16th canon they are appended. It will be remembered that the concession of remarriage, when one of the parties had entered a convent, was made by the Eastern Church. Theodore, in his Penitential, had introduced it into the West. (See next section.) But it was so evidently in conflict with the teaching of the *vinculum* that it never really obtained a hold on the conscience of the Western Church. The explanation of the assent of the Papal representative at Compiègne to this particular concession may perhaps be found in the presence and influence of a representative of the Eastern Emperor.

The 19th Canon of Compiègne permits remarriage even to the woman if her husband be a leper. Remarriage is also permitted to the innocent party in cases of adulterous incest, as at Verberies.¹

This brief notice of the Canons of Verberies and Compiègne will show how, at a time when Pippin the Bref was on the most excellent terms with the Church, when, in fact, he had but just completed the memorable gift of the Italian temporalities to Pope Stephen III., the Frankish Church was following the precedent of the Church of the East by giving way unduly to the secular laws and customs of the Frankish

¹ *Monumenta Germaniae Historica.* Legum, tom. i. 27.

kingdom. The sunshine of secular favour has ever been the most potent of all instruments for the undermining of the Church's loyalty to her ancient traditions.

The Penitential of Theodore of Canterbury will be noticed in the next section. The continental Penitentials based upon it are of no great interest in the matter of divorce and remarriage.

At Aachen in 789 A.D. an important synod was held in the palace of Charlemagne. This synod cited the 102nd African Canon, which forbids all remarriage during the lifetime of the separated partner.¹ The Synod of Paris in 829 A.D. similarly ruled that a wife was not to be put away except for fornication, and that "they who, when their wives have been dismissed for the cause of fornication, marry others are pronounced to be adulterers by the sentence of the Lord."²

The Synod of Worms in 829 A.D. repeated this judgment among the canons "which are to be announced to the people."³ The *Excerpta Canonum* of Lothair I. (835 A.D.) repeats verbatim the clumsy enactment of the Roman Council of 826 A.D., as already cited.⁴

The permission to remarry accorded by the Synods of Verberies and Compiègne to the innocent parties in cases of separation for adulterous incest bore fruit in the scandalous case of Lothair and his wife Theutberga. This *cause célèbre*, for the consideration of which the third Council of Aachen was assembled in A.D. 862, need not stain our pages in any detail. Theutberga was accused of adulterous incest, and Lothair, who had a mistress whom he wished to make queen, sought permission from the Church to contract another marriage. The Council, to its eternal disgrace, conceded the permission, and it is a satisfaction to be able to add that Pope Nicholas I. excommunicated all who took part in the Council.⁵

The Council of Bourges, held in 1031 A.D., is a somewhat

¹ *Monumenta Germaniae Historica*. Legum, tom. i. p. 61.

² *Concilium Parisiense* VI. (Mansi, tom. xiv. p. 596.)

³ *Monumenta Germaniae Historica*. Legum, tom. i. p. 345.

⁴ *Ibid.* p. 372.

⁵ Mansi, tom. xv. pp. 613, *sqq.*

Council of Bourges. late instance of a council which appears to be disposed to admit remarriage after divorce for adultery. The heading of Canon 16 is, "That one who has dismissed his wife without the fault of fornication is not to marry another while she lives." The Canon itself runs: "That those who dismiss their lawful wives without the fault of fornication are not to accept others while these live; nor are the wives to accept other husbands, but let them be reconciled to one another."¹ It is true that there is no statement here that those who put away their wives for adultery may marry again; yet the careful exclusion of their case from the prohibition of remarriage is certainly ground for presumption that this was the view of the Council.

Council of Rheims. The Council of Rheims in 1049 A.D. makes no exception to its general ruling "that no one having deserted his lawful wife is to marry another."²

Council of Tours. The Council of Tours in 1060 A.D. decrees (c. 9): "He who, dismissing his wife without the decision of the bishop, has married or shall have married another woman . . . let him know that he is excluded from the Body and Blood of our Lord Jesus Christ, and from the precincts of the church."³

Council of Rouen. The Council of Rouen in 1072 A.D. is clear upon the point that the bond of marriage is indissoluble except by death.⁴

The Canonists. The Canonists who compiled the various collections of canons and other authorities were of considerable weight in determining the judgment in the matter of marriage which eventually prevailed throughout the West. In 802 A.D. the second Council

The Codex Dionysio-Hadrianus. of Aachen adopted the whole of the so-called Codex Dionysio-Hadrianus. This collection was the work of Dionysius Exiguus, made in the early part of the sixth century, and after his time much extended by the hands of others. In its extended form Pope Hadrian sent it to Charlemagne in 774 A.D.; and hence its name Codex Dionysio-Hadrianus, and its adoption by the Council of Aachen. The various authorities contained in this

¹ *Concilium Bituricense.* (Mansi, tom. xix. p. 505.)

² *Concilium Remense.* (Mansi, tom. xix. p. 742.)

³ *Concilium Turonense.* (Mansi, tom. xix. p. 928.)

⁴ *Concilium Rothomagense.* (Mansi, tom. xx. p. 38.)

collection have been noticed already in these pages in their proper places.

Benedict the Levite compiled a collection of canons and other authoritative utterances about the year 847 A.D. He sums up altogether in favour of the indissolubility of marriage: "That during the lifetime of husband or wife neither of them be united in another marriage"; and again: "And if she have committed fornication, and her husband desire it, she is to be dismissed, but another wife may not be taken in marriage during her lifetime, because adulterers will not possess the kingdom of God, and her penitence is to be accepted."¹ In another place he takes the ruling of the Council of Paris, and so alters its language as to altogether discourage the putting away of a wife, even in the case of adultery. Whereas the Council of Paris had said: "Et quod nisi causa fornicationis, ut Dominus ait, non sit uxor dimittenda, sed potius sustinenda," Benedict reads, "Et ut causa fornicationis non sit uxor secundum Domini sententiam dimittenda sed potius sustinenda."²

The Pseudo-Isidorian collection, which embodies the famed False Decretals, and some other spurious matter, was probably the work of some dishonest compiler or compilers in the province of Rheims. It employs the work of Benedict the Levite, the date of which was 847 A.D.; and it is itself employed as an authority as early as 864 A.D. or 865 A.D. Its date will therefore lie somewhere in the intervening years. The object of the collection appears to have been to exalt the episcopal authority at the expense of the secular and metropolitan authorities by continual reference to the papacy. Its fabrications are therefore not directly concerned with the subject of this investigation, but in a document spuriously assigned to Pope Evaristus, in which the relation of a bishop to his flock is compared with the conjugal relation, the teaching is "that as a wife is not permitted to marry again while her husband lives, although he may have been guilty of fornication, so a church

Benedict
the Levite.

The
Pseudo-
Isidorian
collection

¹ Freisen, *Canonisches Eherecht*, p. 793, quoting Benedict the Levite, III. 73, III. 179.

² *Ibid.* quoting Benedict the Levite, II. 235.

ought not to dismiss its bishop and take another." The Pseudo-Isidore thus takes the entirely strict line, which he holds to be so well established as to provide an undisputed premiss for a less acceptable argument.

Other
Canonists.

Rhabanus Maurus (A.D. 776–856)¹ and Hinkmar of Rheims (A.D. 806–882)² are both decided as to the entire indissolubility of the marriage bond. Hinkmar especially insists on the point repeatedly. Regino, abbot of Prüm (915 A.D.),³ and Burchard, bishop of Worms (1012 A.D.),⁴ both great authorities for the canon law of this period, give the passages on both sides in their collections. Ivo of Chartres (1117 A.D.), in his *Decretum* and *Pannormia*, has only admitted the authorities which take the stricter line.⁵

Gratian.

But of all the Western canonists and compilers in the middle ages the most important, it need hardly be said, is Gratian, whose *Decretum* is the basis of the *Corpus Juris Canonici*. The date of the *Decretum* (*Concordantia discordantium canonum*) may be placed between 1139 A.D. and 1142 A.D. Gratian maintains throughout the entire indissolubility of the marriage bond. That bond only exists indeed when consummation has followed the marital consent of the parties. Till the copula has sealed the contract there is no *sacramentum* and no indissoluble bond. Where once the copula has completed a marriage, there is found the *sacramentum*, and there the bond is indissoluble. Accordingly Gratian decides all the points of difference between the Eastern and Western Churches in the sense now familiar to the canon law of the West. Thus neither imprisonment,⁶ nor absence,⁷ nor the choice of the religious life,⁸ nor slavery,⁹ nor even apostasy, can sever the bond of a marriage which has once been consummated.¹⁰ The same is true of

¹ Freisen, p. 795.

² *Ibid.* p. 798.

³ *Ibid.* p. 801.

⁴ *Ibid.* p. 801.

⁵ *Ibid.* p. 802.

⁶ Gratian's *Decretum* (*Concordantia discordantium canonum*), c. 1, 2, C. 34, q. 1.

⁷ *Ibid.* c. 4, C. 34, q. 1.

⁸ *Ibid.* c. 19–23, C. 27, q. 2, C. 33 q. 5.

⁹ *Ibid.* dictum to c. 6, C. 29, q. 2.

¹⁰ *Ibid.* dictum to c. 2, C. 28, q. 2.

physical incapacity when it occurs at a period subsequent to the marriage.¹ The bond having once existed cannot be dissolved for supervenient causes. In the case of adultery the innocent party is at liberty to put away the offending party, but the bond remains in such sort that the remarriage of the innocent party is itself adultery. Among his summings-up are—"The bond of marriage cannot be dissolved by fornication";² "A marriage which, once entered into, is approved can in nowise be dissolved";³ "Whether the husband has departed from the wife, or the wife from the husband, for the cause of fornication, [the person so departing] is forbidden to cleave to another";⁴ "He commits adultery who presumes to marry one dismissed by her husband";⁵ "She is proved an adulteress who during the lifetime of her husband marries another."⁶ Death is the only cause admitted by Gratian as dissolving the *vinculum* when once it has existed. He concludes the canons which he cites with a *dictum*⁷—"By these authorities it is most evidently shewn that whosoever shall have put away his wife for the cause of fornication cannot marry another during her lifetime, and if he shall have so married he is guilty of adultery."⁸

Reviewing the teaching and practice of the Churches of Western Europe, from the Council of Angers, in A.D. 453, to the time of Gratian, it is possible to trace a long and difficult struggle with the license of the secular laws and the lax customs of the people. At times, as in the East, there is a tendency on the part of the Church authorities to give way on the point of remarriage after divorce, and so to surrender the great principle of indissolubility. The Councils of Vannes (A.D. 465) and Agde (A.D. 506), at the beginning of the period, and the Councils of Verberies (A.D. 753) and Compiègne (A.D. 756), at a later date, are the most conspicuous examples

Summary
of period.

¹ Gratian's *Decretum* (*Concordantia discordantium canonum*) c. 25, 26, C. 32, q. 7.

² *Ibid.* c. 1, C. 32, q. 7.

³ *Ibid.* c. 2, C. 32, q. 7.

⁴ *Ibid.* c. 3, C. 32, q. 7.

⁵ *Ibid.* c. 6, C. 32, q. 7.

⁶ *Ibid.* c. 7, C. 32, q. 7.

⁷ *Ibid.* dictum to c. 16, C. 32, q. 7.

⁸ For a full analysis of Gratian's *Decretum* on this subject, see Freisen, pp. 802 *sqq.*

of this tendency. The two last-named Councils did not restrict their sanction of remarriage to cases of divorce for adultery. On the whole, however, the tradition of primitive Christianity was faithfully guarded. Remarriage after divorce is forbidden by the Councils of Angers (A.D. 453), Nantes (A.D. 658), Aachen (A.D. 789), Paris (A.D. 829), Worms (A.D. 829), Rheims (A.D. 1049), Tours (A.D. 1060), and Rouen (A.D. 1072). The Canonists, and notably Gratian, followed in the same path.

From the time of Gratian the teaching of the *Decretum* on the subject of divorce and remarriage was practically the teaching of the whole Western Church. The controversy was, in fact, closed, and for the purpose of this treatise it is useless to pursue the investigation farther. For the past seven hundred years the historic churches of Western Christendom have declined to recognise remarriage after divorce.

E. *The Churches of the British Isles.*

AUTHORITIES.

SYNODUS ALIA S. PATRICII.

*Anno Incerto.*¹

c. 26. Audi dominum dicentem: *Qui adhaeret meretrici, unum corpus efficitur. Item adultera lapidetur; id est, huic vitio moriatur, ut desinat crescere, quae non desinit moechari. Item, si adulterata fuerit mulier, numquid revertitur ad virum suum priorem. Item, non licet viro dimittere uxorem, nisi ob causam fornicationis, ac si dicat ob hanc causam; unde si ducat alteram velut post mortem prioris, non vetant.*

c. 28. Eadem ratione observanda sunt prima vota et prima conjugia, aut secundis prima non sint irrita, nisi fuerint adulterata.

POENITENTIALE VINNIAI.²

§ 42. Uxorem a viro non discedere dicimus, sed si discederit, manere innuptam aut viro reconciliari secundum apostolum.

¹ Mansi, tom. vi. p. 526. Haddan and Stubbs, *Councils and Ecclesiastical Documents*, vol. ii. p. 337.

² Wasserschleben, *Bussordnungen der abendländischen Kirche*, p. 117.

§ 43. Si alicujus uxor fornicata fuerit et habitet cum alio viro, non oportet adducere uxorem aliam, quamdiu fuerit uxor ejus viva.

§ 45. Sic et mulier si dimissa fuerit ex viro suo, non oportet alio viro copulari, quamdiu fuerit vir ejus in corpore prior, sed expectabit eum innupta in omni patientia et castitate, si forte det Deus patientiam in corde viri ejus. . . .

CANONES WALLICI.¹

Canon 27.

Si quis causa fornicationis alterius uxorem infecerit, capti morte moriantur, et qui eos interfecerit, nullam se timeat habere causam.

Canon 59 (in Cod. Bigot.).

Si quis legitimæ legis voluntate patrum nuptam filio junxerit et juxta hoc concubinam ancillam sibi habere præsumserit, ipse ab Ecclesia Dei et omni Christianorum mensa sit extraneus, nisi ad poenitentiam revocetur.

Canon 60 (in Cod. Bigot.).

Si quis ancillam suam sibi in matrimonio habere voluerit et de rebus suis habet potestatem, si voluerit postea venundare eam, non conceditur. Quodsi eam venundare voluerit, eum damnari jubemus, et ancillam illam in sacerdotis ponimus voluntatem.

GILDAS.

Epistola (547 A.D. or 550 A.D.).²

Reges habet Britannia, sed tyrannos; judices habet, sed impios: sæpe prædantes et concutientes, sed innocentes; vindicantes et patrocinantes, sed reos et latrones; quam plurimas conjuges habentes, sed scortas et adulterantes.

COUNCIL OF HERTFORD (673 A.D.).³

Decimum,

Pro conjugis ut nulli liceat nisi legitimum habere connubium. Nullus incestum faciat, nullus conjugem propriam, nisi, ut sanctum evangelium docet, fornicationis causa relinquat. Quod si quisquam propriam expulerit conjugem legitimo sibi matrimonio conjunctam, si Christianus esse recte voluerit, nulli alteri copuletur; sed ita permaneant, aut propriæ reconcilietur conjugi.

¹ Haddan and Stubbs, *Councils and Ecclesiastical Documents*, vol. i. p. 131.

² *Ibid.* vol. i. p. 48.

³ *Ibid.* vol. iii. p. 118, from Bede, iv. 5.

ARCHBISHOP THEODORE.

*The Penitential.*¹

Lib. i. c. 14.

§ 4. Si quis vir uxorem suam invenerit adulteram, et noluit dimittere eam, sed in matrimonio adhuc habere, annis II bus peniteat, II dies in ebdomada et jejunia religionis aut quamdiu ipsa peniteat, abstineat se a matrimonio ejus, quia adulterium perpetravit illa.

§ 13. Si ab aliquo sua discesserit uxor, I annum poeniteat ipsa, si inpulluta revertatur ad eum, ceterum III; ipse unum, si aliam duxerit.

Lib. ii. c. 12.

§ 5. Si cujus uxor fornicata fuerit, licet dimittere eam et aliam accipere; hoc est, si vir dimiserit uxorem suam propter fornicationem, si prima fuerit, licitum est ut aliam accipiat uxorem; illa vero, si voluerit penitere peccata sua, post V annos alium virum accipiat.

§ 6. Mulieri non licet virum dimittere licet sit fornicator, nisi forte pro monasterio. Basilius hoc judicavit.

§ 7. Legitimum conjugium non licet frangi sine consensu amborum.

§ 8. Potest tamen alter alteri licentiam dare accedere ad servitutem Dei in monasterium et sibi nubere, si in primo conubio erit, secundum Grecos; et tamen non est canonicum; sin autem in secundo, non licet vivente viro vel uxore.

Maritus si se ipsum in furtu aut fornicatione servum facit vel quocunque peccato, mulier si prius non habuit conjugium, habet potestatem post annum alterum accipere virum; digamo non licet.

§ 11. Quaecunque mulier adulterium perpetravit, in potestate viri est, si velit reconciliare mulieri adulterae. Si reconciliavit, in clero non proficit vindicta illius, ad proprium virum pertinet.

§ 12. Vir et mulier in matrimonio, si ille voluerit Deo servire et illa noluerit, aut illa voluerit et ille noluerit; vel ille infirmatus seu illa infirmata fuerit; tamen omnino cum consensu amborum separentur.

§ 19. Si mulier discesserit a viro suo despiciens eum, nolens revertere et reconciliari viro, post V annos cum consensu Episcopi aliam accipere licebit uxorem.

§ 20. Si in captivitatem per vim ducta redimi non potest, post annum alteram accipere.

¹ Haddan and Stubbs, *Councils, &c.* vol. iii. p. 188.

§ 21. Item, si in captivitatem ducta fuerit, vir ejus V annos expectet; similiter autem et mulier si viro talia contingerint.

§ 22. Si igitur vir alteram duxerat uxorem, priorem de captivitate reversam recipiat, posteriorem dimittat: similiter autem illa, sicut superius diximus, si viro talia contingerint, faciat.

§ 23. Si cujus uxorem hostis abstulerit, et ipse eam iterum adipisci non potest, licet aliam accipere; melius est sic facere quam fornicationes.

§ 24. Si iterum post haec uxor illa venerit ad eum, non debet recipi ab eo, si aliam habet; sed illa tollat aliam virum sibi, si unum ante habuerat. Eadem sententia stat de servis transmarinis.

THE DIALOGUE OF EGBERT, ARCHBISHOP OF YORK (A.D. 732 × 766).¹

XIII. Interrogatio.

Quod si ex convenientia amborum legitimum dissolvitur conjugium, propter infirmitatem viri vel uxoris, si liceat sano incontinenti secundum inire conubium, infirmo consensum praebente, et promittente sese continentiam in perpetuo servaturum: Vestra Sanctitas quid de hoc judicat?

Responsio.

Nemo contra Evangelium, nemo contra apostolum sine vindicta facit, idcirco consensum minime praebemus adulteris; onera tamen, quae sine periculo portari non possunt, nemini imponimus, ea vero, quae Dei sunt mandata, confidenter indicimus. Quem autem infirmitas implendi praepedit, uno profecto multum reservamus iudicio Dei.

Igitur ne forte videamur silentio fovere adulteros, aut diabolus qui decipit adulteros de adulteris exultet, ulterius audi: "Quod Deus conjunxit, homo non separet." Et item: "Qui potest capere, capiat." Sepe namque temporum permutatione, necessitas legem frangit. Quid enim fecit David, quando esuriit? et tamen sine peccato est. Ergo in ambiguis non est ferenda sententia. Sed consilia necesse est periclitari pro salute aliorum, hac conditione interposita, ut ei qui se continentiae devovit, nullo modo concedatur secundas inire nuptias, vivente priore.

JUDICIUM CLEMENTIS (Willibrord?) 690 A.D.-693 A.D.²

14. Si quis uxorem legitimam dimittit et aliam ducit, excommunicetur a Christianis, etiamsi illa prior uxor consentiat.

¹ Haddan and Stubbs, *Councils, &c.* vol. iii. p. 409.

² *Ibid.* p. 227.

15. Non licet legitimo conjugio separari, nisi amborum consensus fuerit, ut innupti maneant.

19. Si cujus uxorem hostes rapuerint, et non potuerit eripere eam, post annum integrum licet ei aliam ducere, et si postea redierit, licet eam alio viro ducere.

CANONES ADDAMNARI VEL ADDOMINARI.¹

c. 16. De meretrice conjuge sic idem interpretatus est, quia meretrix erit decusso proprii mariti jugo et secundi mariti inito vel tertii, cujus maritus illa vivente alteram non suscipiet, quia nescimus illam auctoritatem, quam legimus in quaestionibus Romanorum, utrum idoneis an falsis testibus ornatam fuisse.

THE VENERABLE BEDE.

*In S. Marc. x.*²

Quae Deus conjunxit, unam faciendo carnem viri et feminae, haec homo non potest separare, nisi forsitan solus Deus. Homo separat, quando propter desiderium secundae uxoris primam dimittit. Deus separat qui et conjunxerat, quando ex consensu propter servitutem Dei, eo quod tempus in arcto sit, sic habemus uxores quasi non habentes . . .

Una ergo solummodo causa est carnalis, fornicatio: una spiritalis, timor Dei, ut uxor dimittatur, sicut multi religionis causa fecisse leguntur. Nulla autem causa est Dei lege perscripta, ut vivente ea quae relicta est, alia ducatur.

CANONS ATTRIBUTED TO S. PATRICK.

(Sinodus Episcoporum, id est, Patricii, Auxilii, Issernini.)³

Canon 19.

Mulier Christiana, quae acciperit virum honestis nuptiis, et postmodum discesserit a primo, et junxerit se adulterio; quae haec fecit, excommonis sit.

LAWS OF HOWEL THE GOOD.

VIII. OF WOMEN.⁴

Venedotian Code, Book II. c. 1.

§ 1. The first of [the laws of the women] is: If a woman be

¹ Wassersleben, *Bussordnungen der abendländischen Kirche*, p. 117.

² Migne's Ed. vol. iii. p. 230.

³ Haddan and Stubbs, *Councils, &c.* vol. ii. p. 329.

⁴ *Ibid.* vol. i. pp. 211 *seqq.*

given in marriage she is to abide by her *agweddi*¹ unto the end of the seventh year; and if there be three nights wanting of the seventh current year, and they separate, let them share into two portions everything belonging to them.

§ 9. And if they separate before the seventh year, let there be paid to her her *agweddi*, her *argivreu*,² and her *cowyll*; ³ and if she was given when a maid, whatever of those things remain she shall have; and if she leave her husband before the seventh year she loses all these, except her *cowyll*, and her *wyneb-werth*⁴ for his *gowyn*.⁵

§ 10. Should her husband be leprous, or have fetid breath, or be incapable of marital duties; if on account of one of these things she leave her husband, she is to have the whole of her property.

§ 12. If by dying and living they separate, let the sick, aided by the confessor, share, and let the healthy choose.

§ 14. If living they separate, let her and her property remain in the house to the end of nine days and nine nights, to ascertain whether the separation be legal; and if the separation be right, at the end of the ninth day let her property go before, and, after the last penny, let her go herself.

§ 17. If the husband take another wife, after he shall have parted from the first wife, the first is free.

§ 18. If a man part from his wife, and she be minded to take another husband, and the first husband should repent having parted from his wife, and overtake her with one foot in the bed and the other outside the bed, the prior husband is to have the woman.

§ 31. Whoever shall sleep three nights with a woman, from the time the fire is covered until it be uncovered the following morning, and after that willet to separate; let him give her an ox that shall be worth twenty pence, another worth thirty pence, and another worth sixty pence; and if he take her to house and home, and she live with him unto the end of seven years; thenceforwards he is to share with her, as with a betrothed wife.

Dimetian Code, Book ii. c. 18.

§ 4. A man is free to forsake his wife, if she notoriously attach herself to another man; and she is to obtain nothing of her right,

¹ agweddi=dower. ² argivreu=paraphernalia. ³ cowyll=maiden-fee.

⁴ wyneb-werth=face-worth (fine payable for insult).

⁵ gowyn=fine due to the wife from the husband for the latter's adultery.

excepting the three things which are not to be taken from a woman ; and the seducer is to pay to the lawful husband his *saraad*.

§ 28. If a man deserts his wife unlawfully, and takes another, the rejected wife is to remain in her house until the end of the ninth day ; and then, if she be suffered to depart entirely from her husband, everything belonging to her is to go in the first place out of the house ; and then she is to go last out of the house, after all her property : after that, on bringing the other into the house, he is to give *dilysdawd*¹ to the first wife ; because no man by law is to have two wives.

§ 29. Whoever shall leave his wife, and shall repent leaving her, she having been given to another husband ; if the first husband overtake her with one foot in the bed, and the other out ; the first husband, by law, is to have her.

LAWS OF THE NORTHUMBRIAN PRIESTS (950 A.D.).²

35. If a priest dismiss one wife, and take another, let him be anathema.

54. If any man dismiss his lawful wife [while she is] living, and marry another, let him want God's mercy, unless he make satisfaction for it ; but let every one retain his lawful wife so long as she lives, unless they both choose to be separated by the bishop's consent, and are willing to preserve their chastity for the future.

PENITENTIAL CANONS, KNOWN AS THE CODE OF S. DUNSTAN (about 963 A.D.).³

27. He that relinquisheth his wife and taketh another woman breaketh wedlock. Let none of those rights which belong to Christians be allowed him, either during life, or at his death, nor let him be buried with Christian men : and let the same be done to a delinquent wife : and let the kindred that were present at the contract suffer the same doom, except they will first be converted and earnestly make satisfaction.

S. ALPHEGE.

*Laws Ecclesiastical and Canons at Eanham (A.D. 1009).*⁴

And never let it be that a Christian marry within the fourth

¹ *Dilysdawd* = assurance.

² *Johnson's English Canons*, Ed. Bacon, vol. i. p. 380.

³ *Ibid.* vol. i. p. 433.

⁴ *Ibid.* vol. i. pp. 484-5.

degree of relation, among his own kindred that is within the fourth generation; nor to the widow of one that is so near akin, in worldly affinity, nor one nearly related to the wife, whom he formerly had, nor to any consecrated nun; nor to his spiritual relations; nor to one that is divorced. Nor let him who desires to observe God's law aright, and to guard himself against hell-fire, have more wives than one; but continue with her only so long as she lives.

KING CNUTE'S LAWS ECCLESIASTICAL (A.D. 1017).¹

7. We enjoin and charge and command in God's name, that no Christian man do ever take a wife of his own kin within the sixth degree of relation, nor the widow of a kinsman so nearly related to him, nor of the kindred of a wife whom he formerly had, nor of his sureties at baptism, nor a consecrated nun, nor a divorced woman, nor practise any unlawful copulation. Let no man have more than one wife, and let her be a wedded wife, and let him remain with her only so long as she lives, if he will rightly observe God's will, and secure his soul against hell flames.

REFORMATIO LEGUM ECCLESIASTICARUM.²

Tit. De Adulteriis et Divortiis.

Cap. 5. Cum alter conjunx adulterii damnatus est, alteri licebit innocenti novum ad matrimonium (si velit) progredi. Nec enim usque adeo debet integra persona crimine alieno premi, cælibatus ut invite possit obtrudi: quapropter integra persona non habebitur adultera, si novo se matrimonio devinxerit; quoniam ipse causam adulterii Christus exceptit.

Cap. 8. *Divortium propter desertum matrimonium.*

Cum alter ex conjugibus aufugerit, seque abalienarit ab altero, si persona absens possit inveniri, consiliis, adhortationibus, et poenis cogatur ut ad conjugem se rursus adjungat . . . quam ad rem si nulla ratione possit adduci, contumax in eo persona debet accipi . . . et propterea perpetuæ carceris custodiæ dedatur, et deserta persona novarum potestatem nuptiarum ab Ecclesiastico judice sumat . . . Absentem requiri volumus . . . Si se non ostenderit, aut ejus vicarius . . . judex illi biennium vel triennium indulgebit . . . quo tempore consumpto . . . destituta persona nuptiarum vinculis liber-

¹ *Johnson's English Canons*, Ed. Bacon, vol. i. p. 506.

² Ed. 1640, p. 49, quoted by Keble, *Sequel*, &c. pp. 201-2.

abitur, et novum sibi conjugem, si velit, sumat . . . Secundum matrimonium plenissimo jure valeat.

Cap. 9. *Divortium propter nimis longam conjugis absentiam.*

Quando non aufugerit conjunx, sed militiam, aut mercaturam, aut aliquam habet hujusmodi legitimam et honestam peregrinationis suae causam, et abfuerit diu domo, largientur alteri conjugi judices . . . biennii vel triennii spatium, in quo mariti reditum expectet. Quo tempore toto si non revertatur, nec de vita possit illius aliquid esse explorati . . . alteri conjugi novas concedi nuptias aequum est.

Cap. 10. *Inimicitiae capitales divortium inducunt.*

Inter conjuges si capitales intercedant inimicitiae, tamque vehementer exarserint, ut alter alterum aut venenis appetat, aut aliqua vel aperta vi, vel occulta peste vitam velit eripere . . . divortio volumus hujusmodi personas distrahi.

Cap. 11. *Malae tractationis crimen tandem divortium inducit.*

Si vir in uxorem saeviat, et acerbiter in ea nimiam factorum et verborum expromat . . . si ne pignoribus quidem, aut fidejussoribus coerceri potest maritus, nec asperitatem velit isto modo deponere, tum capitalem illum conjugis inimicum esse existimandum est, et illius vitam infestare. Quapropter divortii remedio periclitanti succurrendum erit . . .

INSTITUTION OF A CHRISTIAN MAN (1545 A.D.).¹

In marriages lawfully made, and according to the ordinance of Matrimony prescribed by God and Holy Church, the bond thereof can by no means be dissolved during the lives of the parties.

THE BOOK OF COMMON PRAYER.

The Form of Solemnization of Matrimony.

1. THE QUESTIONS OF THE BETROTHAL.

M. Wilt thou have this Woman to thy wedded wife, to live together after God's ordinance in the holy estate of Matrimony? Wilt thou love her, comfort her, honour, and keep her in sickness and in health; and, forsaking all other, keep thee only unto her, so long as ye both shall live?

¹ *Formularies of Faith, &c.* Oxford, 1825, p. 91, quoted by Keble, *Sequel*, &c, p. 202.

The Man shall answer,

I will.

Then shall the Priest say unto the Woman,

N. Wilt thou have this Man to thy wedded husband, to live together after God's ordinance in the holy estate of Matrimony? Wilt thou obey him and serve him, love, honour, and keep him in sickness and in health; and, forsaking all other, keep thee only unto him, so long as ye both shall live?

The Woman shall answer,

I will.

2. THE PLIGHTING OF THE TROTH.

Then shall they give their troth to each other in this manner. The Minister, receiving the Woman at her father's or friend's hands, shall cause the Man with his right hand to take the Woman by her right hand, and to say after him as followeth:

I *M.* take thee *N.* to my wedded wife, to have and to hold from this day forward, for better for worse, for richer for poorer, in sickness and in health, to love and to cherish, till death us do part, according to God's holy ordinance; and thereto I plight thee my troth.

Then shall they loose their hands; and the Woman, with her right hand taking the man by his right hand, shall likewise say after the Minister,

I *N.* take thee *M.* to my wedded husband, to have and to hold from this day forward, for better for worse, for richer for poorer, in sickness and in health, to love, cherish, and to obey, till death us do part, according to God's holy ordinance; and thereto I give thee my troth.

3. THE JOINING OF THE HANDS.

Then shall the Priest join their right hands together, and say,

Those whom God hath joined together let no man put asunder.

4. THE COLLECT BEFORE THE BLESSING.

O God, who by thy mighty power hast made all things of nothing; who also (after other things set in order) didst appoint, that out of man (created after thine own image and similitude) woman should take her beginning; and, knitting them together, didst teach that it should never be lawful to put asunder those whom thou by Matrimony hadst made one: O God, who hast consecrated the state of Matrimony to such an excellent mystery, that in it is signified and represented the spiritual marriage and unity betwixt Christ and his Church; Look mercifully upon these thy servants, that both this

man may love his wife, according to thy Word (as Christ did love his spouse the Church, who gave himself for it, loving and cherishing it even as his own flesh), and also that this woman may be loving and amiable, faithful and obedient to her husband ; and in all quietness, sobriety, and peace be a follower of holy and godly matrons. O Lord, bless them both, and grant them to inherit thy everlasting kingdom ; through Jesus Christ our Lord. *Amen.*

AYLIFFE.

Parergon. Title, Of Divorce.

But it is to be observed that by the Canon Law the Bond of Marriage is not dissolved on the score of adultery or fornication, but it only operates a separation of their conversation at Bed and Board ; nor can this Law grant a Power unto either of the persons in Wedlock of passing to a second marriage.

I shall conclude this first cause with the famous case of the Marchioness of Northampton here in England, who was convicted of adultery in the reign of Henry the Eighth, and the Marquis was thereupon divorced from her in the beginning of King Edward the Sixth's reign ; and thereupon a Commission was granted, directed to Archbishop Cranmer, and nine other divines, to certify whether she continued his wife, notwithstanding the Divorce *a mensa et thoro* ; and whether by the word of God he might marry again. But before this matter was determined he married again, at which the Privy Council were offended ; because, according to the Canon Law, the first marriage continued good even after such a divorce. The Marquis insisted that, by the law of God, the very bond of marriage was dissolved for adultery ; and that marriage was never thought to be indissoluble till the Romish Church made it a Sacrament. But yet that Church, by the help of the Canonists, had invented such distinctions which made it easy to be avoided. That it would be very inconvenient, if a marriage should not be dissolved on the account of adultery ; because then the innocent person must live with the guilty, or be tempted to commit the like sin, if the bond of marriage still subsisted. Soon afterwards the delegates gave sentence in favour of the second marriage, and, amongst other things, they founded it on Christ's definition of marriage, viz., that *two should be one flesh*. So that when that was divided, as it must be by adultery, the marriage itself was dissolved. 'Tis true, the sentence given by these delegates was about four years afterwards confirmed by a

private Act of Parliament, to which two Peers and two Bishops dissented; and the second marriage was declared to be good by the law of God, any Canon or Ecclesiastical Law to the contrary notwithstanding. But in the very next year that Act was repealed, and the reason mentioned in the preamble was because it was obtained upon private views, and that it was an encouragement for licentious persons to procure divorces on false allegations.

The two last causes of a divorce (Infidelity and *Ingressus Religionis*), according to the Canon Law, being not admitted here in England, I shall omit to handle them under this title specially; and therefore I shall proceed to speak of a divorce *a vinculo matrimonii*. In all those cases where such a divorce was, the marriage was not *de jure*, according to the Canonists; because it was void *ab initio*. For where the incapacity arises from any matter precedent to the marriage, there the marriage is only *de facto*; and a sentence of divorce in such case is only declaratory, that the marriage is dissolved; for it was absolutely void before, and either of the parties might marry again, though the other was living. But it is otherwise when the divorce is occasioned *ex causa subsequenti*, as in cases of adultery, cruelty, and the like. For there, the marriage being once good, it can never be dissolved *a vinculo*; because such subsequent cause cannot effect the bond of matrimony, though it is sufficient to separate the parties *a mensa et thoro*, which is in the nature of a temporal, and not a perpetual divorce: And if either of the parties shall marry again in the lifetime of the other, such marriage is void; and so it was adjudged in the case of *Rye and Fulcomb*. And as a further confirmation of the law in this matter it was afterwards adjudged, That a divorce *causa adulterii* is no bar of dower, which shews that the marriage is not dissolved.

The third cause of a Divorce is a machination of the wife's death, or any other act of cruelty: For if the husband does by poison, or any other severe usage, lay snares against his wife's life, she may sue out a separation *quoad thorum et mensam*.

The Spiritual Court has a proper jurisdiction in cases of this nature, and we have several instances of suits brought there by the wife for a separation upon the score of cruelty.

The wife of one *Porter* was divorced from him on the same account, but it was only *a mensa et thoro*. For this kind of divorce gives the wife liberty to live separately from her husband, which otherwise she could not do; and 'tis no more than a provision for her safety, and to avoid his cruel treatment of her, since she cannot marry again during his life without incurring the danger of felony.

BURN.

*Ecclesiastical Law.*¹

And this doctrine, that neither of the parties shall contract matrimony during each other's life, hath been confirmed by the temporal judges in the case of *Foliambe*, who, having been divorced from his wife for incontinency on her part, married again during her life; and the second marriage was declared to be void, because it was only a divorce *a thoro et mensa*.

Causes for separation *a vinculo* are consanguinity or affinity within the degrees prohibited; also impuberty, malformation, or frigidity, where the marriage itself was merely void *ab initio*, and the sentence of divorce only declaratory of its being so.

Divorce *a thoro et mensa* is when the use of matrimony, as the cohabitation of the married persons, or their mutual conversation, is prohibited for a time, or without limitation of time. And this is in cases of adultery, cruelty, or the like, in which the marriage, having been originally good, is not dissolved, nor affected as to the *vinculum* or bond.

THE LAMBETH CONFERENCE, 1888.

Report of the Committee² appointed to consider the subject of Divorce.

The Committee appointed to consider the subject of "Divorce, and the question whether it may be practicable to offer any advice or suggestion which may help the Bishops and Clergy towards agreement in their action concerning it," report as follows:

They think it necessary to call attention to the fact that in very

¹ Ed. Phillimore, vol. ii. pp. 500-2.

² Names of the Members of the Committee:

Bishop of Chester (*Chairman*).

„ Bombay.
„ Dover.
„ Durham.
„ Exeter.

Bishop of Huron.

„ Maryland.
„ Mississippi.
„ Quincy.
„ Singapore.

many Christian nations there is evidently a growing laxity of principle and of practice with regard to Divorce, and that in some countries strong attempts have been made to afford further facilities for it, with the result of weakening and lowering, both in law and in popular sentiment, the idea of the sanctity of marriage.

1. They therefore consider it important to declare that, inasmuch as our Lord's words expressly forbid Divorce, except in the case of fornication or adultery, the Christian Church cannot recognise Divorce in any other than the excepted case, or give any sanction to the marriage of any person who has been divorced contrary to this law, during the life of the other party.

2. They would add that under no circumstances ought the guilty party, in a case of Divorce for fornication or adultery, to be regarded, during the lifetime of the innocent party, as a fit recipient of the blessing of the Church on marriage.

3. They recognise the fact that there always has been a difference of opinion in the Church on the question whether our Lord meant to forbid marriage to the innocent party in a Divorce for adultery: and they recommend that the Clergy should not be instructed to refuse the Sacraments or other privileges of the Church to those who, under civil sanction, are thus married.

4. But whereas doubt has been entertained whether our Lord meant to permit such marriage to the innocent party, the Committee are unwilling to suggest any precise instructions in this matter, and recommend that, where the laws of the land will permit, the determination should be left to the judgment of the Bishop of the Diocese, whether the Clergy would be justified in refraining from pronouncing the blessing of the Church on such unions.

Signed on behalf of the Committee,

W. CESTR:

Chairman.

Resolutions formally adopted by the Conference.

4. (A) That, inasmuch as Our Lord's words expressly forbid Divorce, except in the case of fornication or adultery, the Christian Church cannot recognise Divorce in any other than the excepted case, or give any sanction to the marriage of any person who has been divorced contrary to this law, during the life of the other party.

- (B) That under no circumstances ought the guilty party, in the case of a divorce for fornication or adultery, to be regarded, during the lifetime of the innocent party, as a fit recipient of the blessing of the Church on marriage.
- (c) That, recognising the fact that there always has been a difference of opinion in the Church on the question whether Our Lord meant to forbid marriage to the innocent party in a divorce for adultery, the Conference recommends that the Clergy should not be instructed to refuse the Sacraments or other privileges of the Church to those who, under civil sanction, are thus married.

Intro-
ductory
Statement.

By members of the Anglican Churches a peculiar interest and value must always be held to attach to the traditions of the Churches of the British Isles. The Celtic Churches may indeed have been as far removed in their traditions from those sees of the English Church which looked to S. Augustine and to the guidance of Rome, as any Church in Christendom was removed from any other, but both groups played their part in building up the present Churches of the English-speaking peoples, and their traditions and influences are much intertwined.

The
morality
of the
early Celtic
populations
very
corrupt.

It will not be necessary for our present purposes to enquire very closely into the social ethics of the early British and Irish peoples in the matter of marriage. In the period of the Roman invasions the Britons of the South appear to have been not far removed from the practice of promiscuity. The introduction of Roman habits, little elevated as these too often were, could hardly fail to raise the British conception of the marriage relation, but the advent of Christianity would find among the Britons no high standard of morals. In Ireland polygamy appears to have been practised in ancient times.¹ In Scotland the law of succession among the Picts was through the females, and Bede says that this

¹ Whitley Stokes, Introduction to *Tripartite Life of S. Patrick*, p. clxviii. Yet if the other grounds for this opinion are not more to the point than the "fer óen-éetche," *husband of one wife*, required by S. Patrick as a qualification for the bishopric of Leinster, the opinion cannot be regarded as well founded.

law obtained in his day. Dr. Skene remarks: "On examining the list of the Pictish kings down to the times of Bede, we find that there are numerous instances of brothers succeeding each other, but that in no one instance does a son succeed his father. Where, therefore, there were several sons of the same mother they appear to have succeeded each other according to a law of male succession of very general application, which preferred brothers before sons; but when the last brother had succeeded, the period seems to have arrived expressed by Bede in the words 'ubi res perveniret in dubium,' and then the succession went through daughters in preference to sons. Such a custom must manifestly have arisen from an originally lax relation among the sexes, when no filiation could be predicated with certainty except between a son and a mother, and thus alone the continuance of the royal blood could be secured."¹

For the purpose of this treatise these references will shew sufficiently that when Christianity was brought to bear upon the Celtic populations of the British Isles it found in them races of which at any rate portions had to be reclaimed from gross licentiousness. In the Briton of the South this licentiousness was covered by a veneer of Roman civilisation; in the Scot and in the Pict it had rather the character of a brutal savagery; but "the corruption of all flesh" had set its mark upon all the British races. It was not in a generation or in two or three generations that such phases of social laxity as those of which we thus catch glimpses could be eradicated and forgotten, even though the power at work was the power of the grace of God in the Christian Church. Yet, when this is fully admitted, the terrible degradations of the Welsh people in the tenth century, as shewn by the laws of Howel Dda, and the extraordinary bartering of wives which appears to have prevailed in Ireland in the eleventh century—if we may judge by the letters of Gregory VII., Lanfranc, and S. Anselm²—cannot fail to shock the

¹ *Chronicles of the Picts and Scots*, pref. p. ci.

² Thus S. Anselm, *Ep. 147 to Muriardach, king of Ireland*: "Dicitur enim quod viri ita libere et publice uxores suas uxoribus aliorum commutant, sicut quilibet equum equo, aut quamlibet aliam rem re alia ab illo commutat: aut pro libitu et sine ratione relinquunt."

student who remembers that in each case the Church had been at work among these populations for six or seven centuries at least. It would, however, be an altogether false view which should regard the British and Irish Churches as accepting for any length of time such abuses as the temporary marriages which were admitted under Howel Dda, or the wild license of the Irish kings of the eleventh century. On the whole the teaching of the Celtic Churches during the long centuries of struggle with barbaric license appears to have been worthy of the rest of Christendom.

The
Teutonic
peoples
compara-
tively pure.

The Teutonic peoples shew no such general decline of moral probity in their heathen days, as we seem to trace among the Celts. The Roman testimonies to their purity of life are familiar, and S. Boniface, writing to Ethelbald, king of Mercia, to reprove him for his licentiousness, reminds him that even the heathen Saxons viewed adultery with abhorrence. "In old Saxony, if a maiden has dishonoured her father's house by unchastity, or if a married woman, forsaking the tie of marriage, has committed adultery, they sometimes compel her to put an end to her life with her own hand by hanging herself with a rope, and on her ashes, when she has been set fire to and consumed, they hang her corrupter."¹ S. Boniface mentions other punishments in vogue among the heathen Saxons on the Continent, curious in themselves, and making additionally clear the fact that the moral traditions of the Teutonic peoples were fairly high. The references made in a former section to German laws will have indicated some points in which they fell short of the Christian standard, but on the whole they do not appear to have ever sounded the depths of ignoble living with which the Celtic peoples had become only too familiar.

The first authorities on the subject of marriage which are commonly cited in connexion with the Celtic Churches are the canons of the two so-called synods of S. Patrick. Mr.

¹ Haddan and Stubbs, *Councils, &c.*, iii. p. 353: "Nam in antiqua Saxonia, si virgo paternam domum cum adulterio maculaverit, vel si mulier maritata, perduto foedere matrimonii, adulterium perpetraverit, aliquando cogant eam propria manu per laqueum suspensam, vitam finire; et super bustum illius, incensæ et concrematae, corruptorem ejus suspendunt."

Haddan has shewn¹ that the canons of the "first synod of S. Patrick" really belong to the eighth century, where they will be noticed. The "second synod of S. Patrick" is not so certainly to be placed, but it appears to be an Irish synod, and one of considerable antiquity. It does not appear to be S. Patrick's, as one certainly of its canons contradicts the "Confession."² In the absence of decisive indications as to date it may be noticed here.

The
Second
Synod of
S. Patrick.

This Irish synod quotes our Lord (c. 26) as saying, "It is not permitted to put away a wife save for the cause of fornication," and thereupon makes the following comment: "As if He should say that for that cause it is permitted, and accordingly if a man marry a second wife as if after the death of the former, they forbid it not."

The 28th canon implies the same concession, when it affirms that a first marriage is not voided by any subsequent union except in the case of adultery.³

The so-called second synod of S. Patrick therefore admits the remarriage of the innocent husband in the case of the divorce of the wife for fornication. It will be remembered that the Council of Vannes, in 465 A.D., took the same line, and it is not unlikely that a decision which applied to the British Christians of Brittany had become known to their brethren in Ireland.

Re-
marriage
of the
innocent
husband
admitted.

One of the oldest documents of the Irish Church which bears upon the subject is the Penitential of Vinniaus, or S. Finian. It is not easy to say with certainty to which Finian this book should be ascribed, but Wasserschleben inclines to the Finian who, born in Ireland in 450 A.D., passed some years of training, first in Gaul, and afterwards in Wales, and then towards the close of the fifth century returned to Ireland.⁴ S. Finian lays down, following S. Paul,

The
Penitential
of
Vinniaus.

¹ Haddan and Stubbs, *Councils*, &c. ii. p. 331, note z.

² *Ibid* ii. p. 333, note a.

³ *Synodus Alia S. Patricii* (Mansi, tom. vi. p. 526); Haddan and Stubbs, *Councils*, &c. ii. p. 337.

⁴ Wasserschleben, *Die Bussordnungen der abendländischen Kirche*, pp. 108-119. Schmitz, *Die Bussbücher und die Bussdisciplin der Kirche*, pp. 498, 499, declares for the younger S. Finian, of Moville, who died A.D. 579.

Re-
marriage
disallowed.

that a wife ought not to leave her husband, but that if she depart she ought either to remain unmarried or to be reconciled to her husband. Canon 43 is very plain. "If any man's wife have committed fornication, and be living with another man, he ought not to marry another wife so long as his wife is living." Similarly in the case of the woman. It is also laid down that the sterility of the woman is no admissible ground of repudiation. The testimony of S. Finian on the subject of marriage after divorce is thus in entire accord with the traditions of the first three centuries.

Canones
Wallici.

Adultery
to be
visited
with
death.

Marriage
with a
female
slave in-
dissoluble.

Next may be mentioned the *Canones Wallici*. Of these Mr. Haddan says: "On the whole they may be pronounced probably Welsh, and, if so, belong to that period (c. 550–650 A.D.), during which both the Welsh Church and the Welsh principalities appear to have become organised."¹ In these remarkable canons adultery is treated as a serious crime. "If any man, for the sake of fornication, shall have corrupted the wife of another, let them, being taken, die the death; and whosoever shall have killed them, let him stand in no fear of prosecution." It is forbidden to keep at the same time a wife and a concubine. The 60th canon (*Cod. Bigot.*) lays down that marriage with a female slave has the ordinary character of Christian marriage. "If any man have willed to take his female slave to himself in marriage, and he have power over his own effects, if he afterwards desire to sell her it is not conceded. But if he determine to sell her, we ordain that he be condemned, and we assign the slave to the discretion of the priest." This firm statement of the indissolubility of marriage, even when the woman was a slave, is clear proof that the Welsh Church was at this period thoroughly in earnest in attacking the peculiar faults of the Welsh social system. It should be read in the light of the laws of Howel Dda, promulgated three centuries later.

Gildas.

It may be fairly doubted whether the penalty of death assigned by the *Canones Wallici* to persons guilty of adultery was ever operative. It may perhaps have obtained recognition,

¹ Haddan and Stubbs, *Councils, &c.* i. p. 127.

so far as it provides that a private person who inflicts such penalty of death shall not be liable to prosecution for murder. It must not, however, be overlooked that the abuses which Gildas laments were nearly contemporaneous with the *Canones Wallici*. Those canons are assigned to the period 550-650 A.D., while the Epistle of Gildas was probably written about 547 A.D. Gildas denounces the British kings in general as guilty of many crimes, and among them that "they keep very many wives, but harlots and adulteresses," and then proceeds to charge individual kings by name with various enormities.¹ Certainly it would appear that in the time of Gildas the penalty of death for adultery was very far from reaching the Welsh princes, and it appears little likely that the insertion of that penalty among the *Canones Wallici* a few years later would materially change the prevalent tone. But it was at least an unmistakeable expression of the mind of the Church that the bond of marriage was not to be tampered with.

Licentious-
ness of the
Welsh
kings.

There is no very early authority on the subject of divorce and remarriage in connexion with the Roman mission of S. Augustine (596 A.D.). It has been seen elsewhere that S. Gregory probably maintained the indissolubility of the marriage bond, and the reason why the subject does not come up in the remarkable correspondence of S. Gregory with S. Augustine, which treats of certain specified cases of conscience, is probably the entire adherence which was accorded in England to the line taken in the matter by the Roman Church. Other questions affecting marriage, notably questions regarding affinity, do occur; but on the subject of divorce and remarriage no difficulty appears to have been entertained.

The
Roman
mission
of S.
Augustine.

Question
of re-
marriage
not enter-
tained.

Among the greatest of the early archbishops of Canterbury was Theodore (Abp. 668-690 A.D.). He was born at Tarsus in Cilicia in 602 A.D., and "by such training as Tarsus and Athens afforded, he became a sound Greek and Latin scholar, a philosopher, a thorough adept in secular and divine litera-

Theodore
of Tarsus.

¹ Haddan and Stubbs, *Councils, &c.* i. p. 48.

ture, and, as appears from his whole history, a man of much tact and varied experience." He was nominated Archbishop of Canterbury in 667 A.D. At that time he was at Rome, being "sixty-five years old, a monk of the Eastern or Pauline tonsure, possibly of the rule of S. Basil, and, if in orders at all, not yet advanced to the sub-diaconate."¹ With the first sixty-five years of his life thus predominantly Eastern, his views would naturally tend to identity with the views of the Eastern Churches, and we should expect to find in him the same strictness and the same laxity as were shewn by those Churches in his day. And in fact, as will presently be seen, the Penitential of Theodore, in which his views find least hampered expression, definitely admits remarriage, not only after divorce for adultery, but in certain other cases. The fact that Theodore entertained such views makes the opinions of the English Church, as shewn by the decrees of the Council of Hertford, all the more remarkable. That Council, held in 673 A.D. under the presidency of Theodore himself, ruled "that no man leave his wife except, as the holy Gospel teaches, for the cause of fornication. But if any have expelled his own wife, united to him in lawful marriage, if he will to be rightly a Christian, he is not to unite himself with any other, but let him so abide or be reconciled to his own wife."² The views of the English Church were thus the views of Rome and of the West generally, rather than the views of Theodore and of the East; and their expression in the acts of the Council may be taken as evidence that the Church of England at that time was not in the least prepared to forego her traditions in the matter, even in deference to the convictions of the greatest archbishop who had, up to that time, filled the primatial chair.

Council of
Hertford
disallowed
re-
marriage.

Theodore's
personal
convictions
seen
in the
Penitential.

The Penitential of Theodore leaves no doubt as to what those convictions were when they could find independent expression. Much has been done of late years, by Bishop Stubbs in England, and by Wasserschleben in Germany, to restore the genuine text of this valuable code of discipline,

¹ Bishop Stubbs, in the *Dictionary of Christian Biography*, art. *Theodorus* (7).

² Haddan and Stubbs, *Councils, &c.* iii. p. 118.

and their labours have given us "what may, with the utmost confidence, be affirmed to be the work known during the early middle ages as the Penitential of Theodore." "But although drawn up under the eye, and published with the authority, of Theodore, it is not, in the modern view, a direct work of the great archbishop. According to the preface, it is a collection of answers given by him to persons questioning him." "There is nothing to make it improbable that it was drawn up with the sanction of Theodore himself, or under his eye: rather it may be said that the verses found at the end of the treatise, in which Theodore commends himself to the prayers of Bishop Haeddi, make it certain that this was the case."¹

The Penitential, then, may be regarded as the reproduction by another hand of Theodore's genuine decisions. Among them he rules that if a wife have been unfaithful (*fornicaverit*) her husband may dismiss her, and marry another, and that the guilty wife herself may, on her penitence, be allowed to marry another man after the lapse of five years. A wife is not, however, permitted to put away her husband for fornication on his part, "except, perhaps, for a monastery." One ruling looks at first sight as if it provided a unique ecclesiastical sanction of the license of divorce by mutual consent, which was at this time still conceded by the secular law of the East. "Lawful marriage," it runs, "may not be broken without the consent of both." It is, however, explained by the section immediately following: "Notwithstanding, either may give the other license to enter a monastery for the service of God, and may take license, in his or her own case, to marry again, according to the Greeks, provided that it was such person's first marriage; and yet it is not canonical. If, however, the marriage was a second marriage, permission to remarry is not accorded during the lifetime of the husband or wife." The two sections taken together, therefore, mean (1) that no married person may enter a monastery without the consent of the partner, but

A man may dismiss an adulterous wife and marry again.

Case of one party entering the monastic life.

¹ Haddan and Stubbs, *Councils, &c.* iii. p. 173.

(2) if that consent of the partner be given, and the monastic obligation assumed, the partner is at liberty to marry again, subject to restrictions as to trigamy. A husband convicted of crime, and sentenced to servitude, leaves his wife free to contract marriage with another man after the lapse of a year, provided that the former marriage was her first. A husband

A husband may restore an adulteress, but must do penance.

may be reconciled to an adulterous wife, and, if he choose to be reconciled, she belongs to him, and is not to be counted as freed by her adultery. A husband thus condoning adultery

Divorce by consent for super-venient incapacity.

must, however, undergo penance for two years. The 12th section repeats the 8th as regards monastic profession, but couples with it the case of physical infirmity: "A man and a woman in the married state, if he be willing to serve GOD (*i.e.* in a monastery), and she be unwilling; or she be willing, and he be unwilling; or he be overtaken by infirmity, or she the same; yet they may certainly be parted by mutual consent." The ground of religious profession has already been recognised as a sufficient justification not only for separation of life, but for such entire severance of the marriage tie as will admit the remarriage of the partner remaining in the world. The other ground here brought forward—the ground of the physical incapacity (post-nuptial) of one of the parties—is evidently understood as no less justifying remarriage. Indeed this particular ground of separation is not likely to be alleged at all except with a view to the remarriage of the capable partner. Theodore, then, must be understood to admit remarriage in the case of any person whose partner has undertaken monastic obligations or is physically incapable, provided always that the divorce has the consent of both.

Other concessions.

If a wife have deserted her husband, despising him, and will not return to be reconciled to him, the husband may, with the consent of the bishop, marry again after the lapse of five years. If the wife have been carried away into captivity with violence (*per vim*) and cannot be redeemed, the husband may take another wife after a year. (§ 20.) If she have been carried away into captivity (without violence, and without the impossibility of redemption?) her husband is to wait for her five

years; and similarly in the case of a woman, if her husband be carried captive. (§ 21.) Should the absent partner return, the second spouse is to be dismissed. (§ 22.) The 23rd and 24th Sections, however, decide this difficulty in the opposite sense: "If an enemy have carried off any man's wife, and he cannot obtain her again, he may take another: it is better to act thus than to be guilty of fornication. If after this his wife return to him, she ought not to be received by him, if he have another wife; but let her take another husband for herself, if she had only been married once before. The same decision is of force in the case of slaves beyond seas."

It is not easy to see how Sections 22 and 24 can be reconciled. They both are concerned with the case of the captive wife who returns to find the husband married to another woman. According to Section 22 the original marriage is to stand, and the second wife to be discarded. According to Section 24 the second marriage is to stand, and the returned wife to be held at liberty to herself contract a second marriage. The first of these decisions (§ 22) is the mind of the Eastern Church; the second (§ 24) may have been derived from Frankish sources. Probably the first decision, which restores the prior marriage, is Theodore's; the decision of Section 24 may have been added from some Frankish capitulary. In truth the Penitential, while no doubt on the whole a fair reproduction of Theodore's rulings, is a compilation which will not be found altogether consistent with itself. Thus in the case of Sections 20 and 21, which respectively assign one year and five years as the term of waiting for a captive wife, it is simpler and probably more correct to recognise two parallel rulings to meet the same difficulty, than to seek justifications of the difference in differing circumstances.¹

The long list of indulgent provisions which is found in Theodore's Penitential must be unintelligible to the merely Western Canonist, but it is entirely explained when we recall the fact that Theodore was a Greek. There was probably no church of Western Christendom which would have welcomed such provisions at the end of the seventh century, but they are

The
Penitential
not
altogether
consistent
with itself.

The
provisions
of the
Penitential
derived
from
Eastern
sources

¹ Haddan and Stubbs, *Councils, &c.* vol. iii. pp. 188-200.

a fair expression of the feeling of the Eastern Churches. This will be apparent from the following comparative statement.

CASES.	THEODORE'S PENITENTIAL.	EASTERN CHURCHES SINCE JUSTINIAN.
1. Adultery of wife.	Husband may dismiss her, and marry another.	Husband may dismiss her, and marry another.
2. Unfaithfulness of husband.	Wife may not put away (except perhaps for a monastery).	Wife may not put away.
3. The Religious Life.	Either may, with the consent of the other, enter the religious life; and the party left in the world may marry again. (Provision against trigamy.)	Either may, with the consent of the other, enter the religious life; and the party left in the world may marry again.
4. Reconciliation of adulterous wife.	Husband may restore an adulterous wife, and, if he do, may claim her, leaving her no longer free. He must undergo penance.	The old Roman Law punished reconciliation. The 134th Novel of Justinian enacted that the wife was to be permanently confined in a convent, unless the husband restored her within two years. The later Eastern Church also admits reconciliation. (Not S. Basil or the Council <i>in Trullo</i> .)
5. Supervenient incapacity.	If either be overtaken with incapacity after marriage, the other may marry again.	Incapacity, to constitute a ground of divorce, must have existed from the solemnization.
6. Desertion by wife.	Husband may marry again after five years.	Husband may discard her, and marry again, if she live elsewhere than with her parents.
7. Captivity of wife. (a) with violence. (b) without violence.	Husband may marry again after one year. Do. after five years. Wife (i.) may (ii.) may not claim her husband on her return.	Husband may marry after a time. By the old Roman Law the wife on her return may not claim him. By later Eastern Church Law she may.
8. Captivity of husband.	Wife may marry after five years.	Wife may marry after a time, but must return to the husband if he appears and claims her.

These provisions do not occur again in any authoritative form. The Penitential of Bede.

It is thus not difficult to account for the provisions of Theodore's Penitential. How far the Church of England was for a time committed to them is a matter on which opinions may perhaps vary, but it is certain that these particular provisions are not to be found again in any authoritative form. The Penitential of Bede (before 735 A.D.), probably not thirty years later than the Penitential of

Theodore, and in many respects a mere revision of it, is incomplete indeed; but in its incomplete form it knows nothing of Theodore's provisions with regard to divorce. The Penitential of Egbert, Archbishop of York, which is ascribed by Bishop Stubbs to some date between 732 A.D. and 766 A.D., is also largely based on Theodore's Penitential, while entirely free from these particular provisions.

The *Dialogue of Egbert* (between 732 and 766 A.D.) consists of a number of cases put as questions, with the Archbishop's replies. Perhaps the whole history of the Church could supply no more remarkable instance of perplexity between conflicting authorities than is to be found in the Archbishop's answer to the 13th question. The question deals with one of the points on which Theodore had shewn himself indulgent. It was asked, "If a lawful marriage be dissolved by consent of both parties on account of the infirmity" (*i.e.* post-nuptial incapacity for conjugal intercourse) "of the man or woman, is it lawful for the sound party, being incontinent, to marry, the impotent party giving consent, and promising to live in perpetual continency?" It is remarkable that the point thus raised is not only one of the points on which Theodore had taken the laxer line, but it is precisely that one point upon which the Roman see, in the person of Gregory II., had given a pronouncement in the same sense as Theodore, and that in the interval between Theodore and Egbert (716 A.D.). The Archbishop's answer may be repeated at length: "No one acts against the Gospel or the Apostle without punishment, therefore we give no consent to adulterers. Yet we lay burdens on no man which cannot be borne without danger, but confidently enjoin the commandments of God; but we reserve him unpunished for the just judgment of God whose infirmity hinders him from fulfilling them. Therefore, lest we should seem to connive at adulterers, or that the devil, who deceives adulterers, should rejoice over adulterers, hear further, 'That which God hath joined let no man separate,' and also, 'He that is able to receive it let him receive it,' for necessity often breaks a law by reason of the change of times. For what did David

The
Penitential
of Egbert.

The
Dialogue
of Egbert.

Remark-
able
judgment
on super-
venient
incapacity.

do when he was hungry? and yet he was without sin; therefore sentence is not to be given in doubtful points. But there is a necessity of risking counsels for the salvation of others, upon this express condition, that it be by no means allowed to one that hath vowed continency to contract a second marriage while the former partner lives.”¹ Read in the light of the history of the subject which is before us this halting answer seems to mean, “This license of remarriage is certainly opposed to the Divine law, and it is as certainly conceded by the great Archbishop Theodore and by Pope Gregory II. With the concessions of these great authorities before them, the people will naturally expect similar concessions from other prelates generally, yet how can they be made? It must certainly be rendered quite clear that the remarriage is against the Divine law, but having regard to Theodore’s ruling and the answer of the Pope, we will not actually forbid remarriage; and if the man do in fact remarry we will assign no punishment, but ‘reserve him unpunished for the just judgment of GOD whose infirmity hinders him from fulfilling GOD’s commandments.’”

The attitude recalls the attitude of S. Basil in the fourth century. Happily in England the facility of particular prelates in the matter of divorce and remarriage left no very serious impression, and the *Dialogue of Egbert* is the last important document of the English Church² which is untrue to the teaching of Holy Scripture and of Catholic antiquity.

The
Judicium
Clementis.

Very noticeable, in connexion with the passing shadow thrown by Theodore on the marriage discipline of the Church of England, is the fragmentary document known as the *Judicium Clementis*. Kunstmann identifies the writer with the Anglo-Saxon Clement, that is, Willibrord; and if this identification be correct, the document is a fragment of the Penitential of the great English apostle, who took to the Frisian people the zeal, the faith, and the discipline of the English Church. The date under which Bishop Stubbs places it is 693 A.D., a date immediately touching the episcopate of

¹ Haddan and Stubbs, *Councils, &c.* iii. p. 409.

² But not of the British Church. See the laws of Howel Dda.

Theodore, who died in 690 A.D. It may be said therefore that at the same time that the Eastern prelate was giving to England a Penitential which represented the Eastern discipline, the English prelate was giving to the Netherlands a Penitential which probably represented no less accurately the English discipline. Clement rules that "if any man dismiss his lawful wife, and marry another, he is to be excommunicated by Christians, even if his former wife consent." Again, he lays down that "separation is not permitted in the case of lawful marriage, unless both consent with a view to remaining unmarried." He has, however, one provision which is found among Theodore's Canons, and which is perhaps rather German and Anglo-Saxon than Eastern: "If the enemy have forcibly carried off any man's wife, and he have been unable to rescue her, he may, after the lapse of a whole year, marry another woman, and if the former wife return (subsequently) she may marry another man."¹ It will be remembered that Theodore's Penitential contains not only this ruling, but also one in direct contradiction to it.

Re-marriage after divorce dis-allowed.

Re-marriage after capture of the wife admitted.

The Canons of S. Adamnan, who was Abbot of the celebrated monastery of Hy or Iona from 679 A.D. to 704 A.D., may next be mentioned. Their date will fall somewhere within this period of S. Adamnan's authority, and they will therefore be all but contemporary with the Penitential of Theodore. S. Adamnan was born in Ireland, resided for the greater part of his mature life at Iona, on the border of the Picts and Scots, and was also in intimate connexion with that Northumbrian Church which, Celtic in its origin, had in S. Adamnan's time accepted the ordinary Western usage as regards Easter and the tonsure. He must therefore be held to have been intimately acquainted with the Celtic Churches of his day. He rules as regards divorce that a husband whose wife has been unfaithful is not to marry again during her lifetime. Marriage therefore with S. Adamnan, as with S. Finian, is indissoluble. The reason which he assigns is a remarkable one, when it is remembered that under the influence of Abbot Ceolfrid of Jarrow S. Adamnan had come to advocate the ordinary

Canons of S. Adamnan.

Re-marriage after divorce dis-allowed.

¹ Haddan and Stubbs, *Councils, &c.* iii. p. 227.

Reference
to
Theodore.

Western rather than the Celtic usage as to Easter and the tonsure. He says the man is not to remarry during his wife's lifetime, "because we do not know whether that authority which we have read in the questions of the Romans was supported by adequate or by false witnesses."¹ Here surely we have the echo of what was going on in England. On the one hand the traditions of the churches of these islands, whether Celtic, as expressed by S. Finian, or Anglo-Roman, following the traditions of the Roman See, were asserting themselves, as in the Council of Hertford, to the maintenance of the indissoluble character of Christian marriage. On the other hand were the lax pronouncements of Theodore, who, obviously Eastern in the light of our wider acquaintance with history, was to S. Adamnan simply the foremost representative of the Roman mission. The words of S. Adamnan look as if he had before him the Penitential of Theodore, and as if, notwithstanding his large-hearted willingness to find points of union where he could, he felt altogether unable in this matter to follow the lead of the great archbishop.

The
Venerable
Bede.

Re-
marriage
disallowed.

Early in the eighth century the Venerable Bede was writing his valuable Commentaries. Commenting on S. Mark x., he says that a wife may be put away only for one carnal cause—fornication, and only for one spiritual cause—the fear of God. He goes on to say, "But no cause is written in the law of God, on account of which another wife may be married during the lifetime of her who has been deserted."² This great saint and teacher of the English Church thus simply reverts to the primitive view, brushing aside Theodore's indulgences without comment.

"First
Synod
of
S. Patrick."

The so-called first synod of S. Patrick may next be noticed. According to the heading prefixed to its canons this synod consisted of three bishops—S. Patrick, Auxilius, and Isserninus; and it has consequently been usual to assign the canons to the fifth century. Mr. Haddan, however, points out that they "must obviously be placed at a period when there was a settled Church in Ireland, yet while heathenism still ruled in parts of

¹ Wasserschleben, *Bussordnungen der abendländischen Kirche*, p. 117.

² Ven. Bede in *S. Mark x.* (Migne's Ed. tom. iii. p. 230.)

the country; when the Britons and the Irish had become estranged, *scil.* by the adoption of Roman customs by the latter (north as well as south), while the former retained the Celtic ones, *i.e.* at least after A.D. 716, but before A.D. 777 or 809; and lastly, when the Church had existed long enough in Ireland for a custom to arise and to have become *antiquus*. The first years of the eighth century are the earliest possible date that can be assigned to the collection as a whole." In point of time, therefore, the canons known as the canons of the first Synod of S. Patrick probably come just after Theodore and S. Adamnan, and are about contemporary with the Venerable Bede. One of these canons is as follows: "A Christian woman, having accepted a man in honourable marriage, and afterwards departed from her first husband, and joined herself in adultery, for having so done must be cast out of communion." No other cases of remarriage after divorce are mentioned.¹

Adulteress
to be
excommu-
nicated.

The laws of Howel Dda, or Howel the Good, are assigned by Haddan and Stubbs to about A.D. 928.² These remarkable laws touch the lowest point ever reached by Christian legislation in the matter of marriage. It cannot be said of them that they are purely secular in their character. According to the narrative of the *Brut y Tywysogion*, Howel was accompanied in his journey to Rome by three bishops, Martin of Menevia, Mordaf of Bangor, and Marchlwys of Teilaw, and also by a celebrated doctor of both civil and canon law, named Blegywrydd. The object of their journey was "to consult the wise in what manner to improve the laws of Wales, and to ascertain the laws of other countries and cities, and the laws in force in Britain during the sovereignty of the Emperors of Rome." The result was that, "after searching what was procured from every country, the laws of Dyonwal Moelmud were found to be the best." These laws, codified by the doctor Blegywrydd, were submitted to an assembly of clergy and laity representing all Wales, which was held under King Howel's presidency at Whitland, in Carmarthenshire, about the year 928 A.D. By

Laws of
Howel
Dda.

¹ Haddan and Stubbs, *Councils*, &c. ii. p. 329.

² *Ibid.* i. 211.

this assembly the laws so codified "were expounded, improved, and augmented; and after the laws had passed the judgment and verdict of the country in the assembly, they were authorized and made legal in all the country of Wales." On a second visit to Rome we are told that Howel "ascertained those laws to be in accordance with the law of God, and the laws of countries and cities in the receipt of faith and baptism." The laws have not survived in the original form, but have come down to us in three revisions, corresponding with the three great divisions of Wales, viz., Gwynedd (Venedotia), Dyved (Dimetia), and Gwent. The extracts given above are from these twelfth and thirteenth century revisions. They disclose a condition of social morals happily unique in Christendom. For seven years a wife appears to have lived with her husband on a footing of mutual probation. At the end of that time they could separate without blame. Either could leave the other at any time during the continuance of the seven years, but if the woman so left her husband she was to forfeit most of her belongings, except in certain specified cases. After separation the persons were not held to be bound to one another by any bond. "If the husband take another wife after he shall have parted from the first wife, the first is free." Similarly the woman might accept another husband if she were put away, and a curious regulation lays down the exact point up to which the repentant husband might return and claim her, it being evidently implied that when that point was passed the woman became the wife of the second husband, and ceased to be claimable by the first. Just as under the Roman secular law the power of divorce seems to have been recognised as not in the long run subject to legislative control, while at the same time objectionable forms of divorce were subjected to various penalties and disabilities, so in this Welsh code some separations are *right* and *legal*; and sometimes a "man deserts his wife unlawfully," but even when this is the case the divorcee stands good in law. The regulations in this latter case are curious. "The rejected wife is to remain in her house until the end of the ninth day, and then if she be suffered to depart entirely from her husband everything belonging to her is to go, in the first place, out of

Pro-
bationary
marriages.

Regula-
tions for
divorce.

the house, and then she is to go last out of the house after all her property; after that, on bringing the other into the house, he is to give *dilysdawl* to the first wife, because no man by law is to have two wives."

It is to be feared that the laws of Howel the Good represent only too faithfully the actual morals of the Welsh people in the tenth century, and they leave the further impression that the Church of the day was prepared to sanction the license they disclose.

A document in Anglo-Saxon, entitled the *Laws of the Northumbrian Priests*, and assigned by Johnson to A.D. 950, as probably belonging to the Danish reign of Anlaf, in canon 35 anathematizes a priest who should dismiss one wife and take another; and in canon 54 lays down, "If any man dismiss his lawful wife [while she is] living, and marry another, let him want God's mercy unless he make satisfaction."¹

Laws of the Northumbrian Priests.

A priest who divorces, and marries again.

The Anglo-Saxon Penitential called by Johnson *Archbishop Dunstan's Penitential*, and assigned to A.D. 963, says: "He that relinquisheth his wife and taketh another woman breaketh wedlock."² No exception is made.

Archbishop Dunstan's Penitential

In the *Laws Ecclesiastical and Canons of Eanham*, promulgated by S. Alphege between A.D. 1006 and A.D. 1013, it is laid down, "Never let it be that a Christian marry . . . to one that is divorced. Nor let him who desires to observe God's law aright, and to guard himself against hell-fire, have more wives than one, but continue with her only so long as she lives."³ The same law re-appears in the *Laws Ecclesiastical of Cnute* (A.D. 1017).⁴

Laws Ecclesiastical and Canons of Eanham.

Laws Ecclesiastical of Cnute.

From this time onwards it is hardly necessary to multiply authorities as to the teaching and practice of the English Church. With the Norman Conquest came the traditions of the Norman Church and the continental systems of Canon Law. The century following the Norman Conquest saw the codification of the Canon Law by Gratian (A.D. 1139), and the law school founded by Vacarius at Oxford, about A.D.

From the Norman Conquest no further question in the English Church.

¹ Johnson's *English Canons*, ed. Bacon, i. p. 380.

² *Ibid.* i. p. 433.

³ *Ibid.* i. pp. 484-5.

⁴ *Ibid.* i. p. 506.

1138, would not be slow in commending the *Decretum* of Gratian to the English Church.¹ It may be said that from the time of the Norman Conquest there has never been any serious contention in England that the law of the English Church embodied any recognition of divorce *a vinculo*, properly so-called, or of remarriage after such divorce.

The
Reforma-
tion period.

The period of the Reformation stirred up opinions in this as in other matters, and some of the more prominent English reformers in this, as in other matters, appear to have been satisfied to follow the lead of the reformers of Germany and Switzerland. The important collection of proposed canons known as the *Reformatio Legum Ecclesiasticarum*, by which it was intended to replace the ancient canon law of England, was exceedingly lax on the subject of divorce. Not only adultery, but desertion, continued absence, murderous enmity in the case of either party, and also cruelty in the case of the husband, were held to justify divorce *a vinculo*, and to leave the parties free to marry again.² Happily for England the *Reformatio* never became law, and is therefore only a historical curiosity. The formularies issued with any authority in the early Reformation period are clear enough in the received sense. The *Institution of a Christian Man*, published in A.D. 1537, teaches that "in marriages lawfully made, and according to the ordinance of matrimony prescribed by God and holy Church, the bond thereof can by no means be dissolved during the lives of the parties."³

The
Reformatio
Legum
Ecclesiasti-
carum.

Various
formu-
laries.

The *Necessary Doctrine and Erudition*, the date of which is A.D. 1545, repeats this teaching "with one significant variation." Instead of "God and holy Church," it is now "God and the Laws of every realm."⁴

The *Form for the Solemnization of Matrimony* as set forth in the Prayer-book of 1549, and as modified in the later Prayer-

¹ The Canon Law was always jealously watched in England where it came into conflict with civil prerogatives or with valued features of the Common Law, but its marriage provisions appear to have been admitted without challenge.

² *Reformatio Legum Ecclesiasticarum*, ed. 1640, p. 49.

³ Keble, *Sequel to the Argument*, &c. p. 202, quoting *Formularies of Faith*, &c. Oxford, 1825, p. 91.

⁴ *Ibid.* p. 276.

books, gives no uncertain sound as to the indissolubility of Christian matrimony. The questions of the betrothal enquire, "Wilt thou . . . forsaking all other, keep thee only unto her (him) so long as ye both shall live?" The only solvent of the bond is death. The plighting of the troth is "till death us do part, according to GOD's holy ordinance." The joining of the hands is with the words, "Those whom GOD hath joined together let not man put asunder." The collect before the blessing recites that GOD did "teach that it should never be lawful to put asunder those whom Thou by matrimony hadst made one." There is nowhere any exception or hint of exception.

The
Book of
Common
Prayer.

Till the passing of the Divorce Act in 1857 the law of the realm had no quarrel with the law of the Church in the matter of divorce and remarriage. It is true that between the Reformation and the passing of the Divorce Act a considerable number of cases occurred in which Parliament was found willing to pass a special Act to dissolve a particular marriage, and to legitimate a second marriage during the lifetime of the divorced partner.¹ There is no instance of any such Act having received the sanction of the Church in Convocation or otherwise, and such measures therefore hardly call for much comment in the present work. They are chiefly remarkable as having in every case emphasized the fact that, till the passing of the Divorce Act, the law of England, binding upon every subject till it was altered, maintained the principle of the indissolubility of the marriage bond. A few extracts from the later canonists and ecclesiastical lawyers, in which the same principle is laid down, will be found above.

Divorce
by Act of
Parlia-
ment.

The word *divorce* is in frequent use by the English courts and lawyers to indicate separation *a mensa et thoro*; and it is also sometimes loosely applied to a declaration of nullity of marriage, where for any reason the marriage has been void

Divorce
*a mensa
et thoro.*

¹ In Phillimore's *Burn* (Title, *marriage*) the earlier cases referred to are those of the Marquis of Northampton (A.D. 1551), Lord Ross, afterwards Earl of Rutland, Mr. Lukenor, the Earl of Macclesfield (A.D. 1697), and the Duke of Norfolk (A.D. 1700). In the interval between A.D. 1715 and A.D. 1857 such Acts became very frequent.

ab initio. But it was uniformly held that where a marriage had once been real, it was also indissoluble as to the *vinculum*. Thus Ayliffe: "Where the incapacity arises from any matter precedent to the marriage, there the marriage is only *de facto*; and a sentence of divorce in such cases is only declaratory that the marriage is dissolved; for it was absolutely void before, and either of the parties might marry again though the other was living. But 'tis otherwise when the divorce is occasioned *ex causa subsequenti*, as in cases of adultery, cruelty, and the like. For there, the marriage being once good, it can never be dissolved *a vinculo*; because such subsequent cause cannot affect the bond of matrimony, though it is sufficient to separate the parties *a mensa et thoro*."¹

These two classes of cases; viz. (1) declarations of nullity, and (2) cases of separation of life or divorce *a mensa et thoro*, have always been admitted by the English Ecclesiastical Law as by the Canon Law of Western Christendom generally. Perhaps the most important in practice of the recognised grounds for declarations of nullity are (1) those relationships which render marriage between the parties related sinful, and therefore inadmissible from the first, and (2) those physical defects which make a consummated marriage impossible. In such cases there is no question of divorce properly so called, since where marriage is inadmissible or impossible the *vinculum* of marriage can never begin to be, and can never therefore be dissolved. It is not strictly correct even to speak of annulling such marriages, since the word *annulling* seems to imply that before the annulling such unions were not null. The only expression which is free from misleading associations is perhaps that of "declaration of nullity," which accurately describes a process familiar to the ecclesiastical courts, by which persons who have contracted illegal or impossible marriages can, by a judicial pronouncement, more readily obtain freedom from the various consequences which might ensue if, for want of proof to the contrary, they should pass as bound by such apparent marriages. The other so-called divorce of the English eccle-

¹ Ayliffe, *Parergon*, Title, *Of Divorce*.

siastical law is the divorce *a mensa et thoro*, which sanctions separation of life in cases of unfaithfulness. It has been seen that the evidence of Holy Scripture and of the whole tradition of Christianity is in favour of the rightfulness of such permission to separate.

It is thus the fact that for at least eight centuries prior to the Divorce Act of 1857 the law of England, which in this matter was the Canon Law of Western Christendom, knew nothing of the dissolubility of a marriage bond which had once been established. The Divorce Act sanctioned the entire dissolution of the bond in the case of the adultery of the wife, and also in the case of the adultery of the husband, when coupled with any one of certain specified offences. The result is that, so far as the secular law of England is concerned, persons divorced under the Act are at full liberty to marry again, and this no less in the case of the guilty than in that of the innocent partner. It is even permitted to the guilty partner to marry the paramour. Various laws of divorce, more or less similar, are in force in the various colonies and dependencies of the British Empire, in the United States of America, and in foreign countries where the Anglican Church is represented. It need, however, hardly be repeated that none of the acts of the various local legislatures have altered the laws of the Church of God. So far as those laws are of Divine requirement, the Church has no power to alter them in consideration of the acts of any human legislature. So far as they are of mere human expediency, it would of course be competent to the Church to alter them. But in the case of the Church of England no revision of her marriage laws has ever been made during the thirty years which have elapsed since the passing of the Divorce Act, except on such a minor point as that of the hours of solemnization; and so far as the great principles of marriage are concerned, the law of the English Church necessarily remains exactly what it was.

No
dissolution
of the
bond prior
to the
Divorce
Act of 1857.

Provisions
of the
Divorce
Act.

The complications which arise from the conflict of secular and religious laws have been, as might be anticipated from the nature of the case, of frequent occurrence. They have formed

Conflict
of the laws
secular and
the laws
religious.

The
Lambeth
Conference
of 1888.

Divorce
only for
adultery.

Guilty
party not
to remarry.

Clergy
not to be
instructed
to refuse
the Sacra-
ments to
the
innocent
party.

the subject of consideration at many Church assemblies of various degrees of authority during the last few years. It is perhaps unnecessary to cite the conclusions of any of these assemblies, with the sole exception of the most important of them, viz., the Lambeth Conference of Bishops in 1888. That Conference was not indeed a Council, and did not set forth its resolutions as authoritative; but there is no representation of the Anglican Church to which more weight will be universally accorded. The Conference adopted three of the conclusions of the committee appointed to consider the subject, happily rejecting a fourth, which was in many ways unsatisfactory. The first of the accepted resolutions clears the ground by declining to recognise divorce in any case, except that of fornication or adultery. The second rules "that under no circumstances ought the guilty party, in the case of a divorce for fornication or adultery, to be regarded, during the lifetime of the innocent party, as a fit recipient of the blessing of the Church on marriage." In the third, "recognising the fact that there always has been a difference of opinion in the Church on the question whether our Lord meant to forbid marriage to the innocent party in a divorce for adultery, the Conference recommends that the clergy should not be instructed to refuse the Sacraments, or other privileges of the Church, to those who, under civil sanction, are thus married."

The Conference is thus careful not to accord definite sanction to any case of remarriage after divorce, just as the formularies of the Church are clear in barring all such remarriage. If, however, the innocent party has "under civil sanction" married again, the clergy are not to be instructed to refuse to him "the Sacraments or other privileges of the Church." It is matter of thankfulness that by the first resolution, which excludes a large number of cases of divorce sanctioned by various secular legislatures, the Conference has distinctly recognised that in a matter of Divine law secular legislatures must be disregarded.¹

It should be remembered that it is not claimed for the resolutions of the Conference that they have any directly operative power in over-riding the Canons or other pronounce-

¹ *Report of the Lambeth Conference of 1888.*

ments of the particular Churches. There can, however, be no doubt that the resolutions of the Lambeth Conference are by far the most important utterance on the subject which the Anglican Church has delivered for centuries.

The testimony of the Churches of these islands is now before us. It may be divided into three sections, (1) the period before the Norman Conquest, (2) the period from the Norman Conquest to the passing of the Divorce Act in 1857, and (3) the period since 1857.

(1) In the period before the Norman Conquest there is some diversity of view. In the Irish Church the ancient synod, perhaps of the fifth or sixth century, which is commonly spoken of as the second Synod of S. Patrick, admits remarriage after divorce. On the other hand the Penitential of S. Finian holds the marriage bond to be indissoluble. In the British Church of Wales the *Canones Wallici* assign the penalty of death to persons guilty of adultery, and nowhere admit marriage after divorce in any case. At the same time, however, the letter of Gildas presents an almost incredibly low type of actual morals in the courts of the Welsh princes; and three centuries later, in the laws of Howel the Good, which mark the lowest point reached by Christian marriage legislation, marriages were ordinarily by temporary contract, and were in practice dissoluble at any time by the will of either partner. In the Scotch Church the teaching of S. Adamnan is clear for the indissolubility of the marriage bond, notwithstanding the echoes of different opinion which had reached him from England. In the English Church S. Augustine and his companions and followers may be assumed to have accepted the teaching of the Roman See, and to have known nothing of remarriage after divorce; but Theodore's Penitential admits a laxity of practice, not only in cases of adultery, but in other cases, which is only explained when shown to be practically identical with the contemporary teaching of the Eastern churches in which Theodore had been bred. Notwithstanding the views of the Penitential, which are presumably the views of Theodore, the Council of the whole English Church, which was held at Hertford under Theodore's own presidency, had

Summary
of the
testimony
of the
British
Churches.

(1) Before
the
Norman
Conquest.

stood fast to the indissolubility of the marriage bond. The Penitential of Bede does not follow Theodore in his lax provisions affecting marriage, and Bede in his Commentary on S. Mark maintains that marriage is indissoluble. The Dialogue of Egbert has a halting utterance, as between conflicting authorities. The *Judicium Clementis*, supposed to be the work of S. Willibrord, is strict except in the case of a wife's captivity, when the husband is permitted to remarry. S. Alphege and Cnute in their Laws Ecclesiastical forbid the remarriage of the divorced wife. On the whole it must be said that the churches of these islands before the Norman Conquest give an uncertain sound. It is perhaps neither a time nor a scene in which to expect consistency. The clash of fierce tribes, the mingling of Christian and heathen, the low tone of a nominal Christianity, have all to be reckoned with. Nor were the Christian teachers themselves all of a kindred mind. Among the prelates who sought to guide the unruly elements about them were Celtic bishops, Irish, Welsh, and Scotch, all too little influenced by the rest of Christendom; S. Augustine and his fellows with the full traditions of the Roman See; Theodore breathing the learning and the excessive indulgence of the East; Felix from Burgundy; Agilbert from Gaul. It would have been indeed a marvel had there been consistency. It is perhaps a marvel that the strict primitive rule of marriage and divorce made itself heard at all. It would be heard; it was never silenced; and it prevailed.

(2) From
the
Conquest
till 1857.

(2) From the Norman Conquest to the Divorce Act of 1857 the English law of marriage and divorce was the Canon Law of Western Christendom. The bond of marriage once established was indissoluble, save by death.

(3) From
1857.

(3) From the Divorce Act of 1857 the secular law of England has not been in harmony with the law of the Church. A similar condition of contrast has arisen in most of the English Colonies and Dependencies, and in the various States of the American Union.

III. REASON.

We may now enquire whether to the testimony of Holy Scripture and of the Church in History any addition of value

can be made by an appeal to the faculty of reason. In this sphere much has been written, but the present writer proposes to touch upon only two points of enquiry. Of these the first may be thus stated, What has reason to say to the contention that the act of adultery *ipso facto* dissolves the bond of marriage? The second enquiry is this, If it be granted that the guilty partner is so bound that remarriage after divorce would on his or her part be adultery, how is it possible that the innocent party can be free to remarry?

Two
points of
enquiry.

(i) It has been contended by many that where adultery has found place there is no longer a marriage bond to sever, inasmuch as the act of adultery has *ipso facto* severed the essential, if not the legal, bond. The contention is not without its attractiveness. In the first place, unlike the Roman Law, it admits that there is in the marriage union a certain mysterious bond, over and above the contract of the law. When adultery supervenes it is claimed that in the sin itself is to be found a mysterious *ἐνεργεία*, which severs the marriage bond, and so renders possible a release from the terribly strained relations which ensue.

Does the
act of
adultery
ipso facto
dissolve
the bond?

If for the sake of argument the contention is admitted, to what does it lead? Let a case be supposed. A wife, having committed an act of adultery, is now no longer bound to her husband by the marriage tie. She continues her relations with the adulterer under the style of marriage, and as she is free from her former bond she may be admitted to be again a wife. She tires of her new union, and returns to her first husband. Before she is received by him she is the wife of the sometime adulterer. Her return to her first husband *ipso facto* severs her marriage with the sometime adulterer, and she now continues to live with the first husband as his wife. All three marriages appear to be on the same footing. Each has its bond. This by the hypothesis is not merely the legal contract, but a mysterious tie, which is of the essence of the union. Putting aside then the legal contracts, what goes to make any one of these marriages, appears to be the copula, accompanying the consent of the two parties to a present union dissoluble at will. In other words any sexual union, at least where there is mutual consent,

is a marriage. And this appears to be the meaning of those who support this contention. There is, they affirm, in the sexual union a mysterious bond. Under certain circumstances it is styled marriage; under certain other circumstances it is spoken of as the taking of the members of Christ and the making them the members of a harlot. But the bond is practically the same. It is created in and by the copula, and may be held to be in force till it is severed by a copula with another person, which, in the act of severing the first bond, creates a new bond in its place. If this be the meaning of the argument with which we are dealing, we are now outside the limits of Christian enquiry, and the subject need no further be noticed. Secular systems of social philosophy may recognise such principles; Christianity cannot.

If the
guilty
party is
bound, how
can the
innocent
be free?

The second enquiry asks, If it be granted that the guilty partner is so bound that remarriage after divorce would on his or her part be adultery, how is it possible that the innocent partner can be free to remarry? In the Anglican communion at the present day there is probably a strong preponderance of opinion in favour of the view that the guilty partner is so bound that remarriage after divorce would on his or her part be adultery. There is probably no equally prevalent conviction as to the adulterous character of remarriage on the part of the innocent partner. Now if the guilty partner is so bound that remarriage on his part is adultery, why is he so bound? Adultery, as Tertullian pointed out to the Christians of the second century, is "a crime incident to the marriage state." It implies a bond between two, which binds both. If it be so severed that either is not bound, then both must be free. If it be so in force that either is bound, then both must be bound.

After the long historical investigation which has been pursued in this treatise, it can hardly be matter of surprise that opinion tends to be more pronounced with regard to the adulterous character of remarriage in the case of the guilty partner than it is with regard to its adulterous character in the case of the innocent partner. The Church in history has been more often found condoning the remarriage of the innocent

than that of the guilty. But while history might thus be adduced with some reason to support a difference of discipline in the matter of remarriage, there still remain to be met the inexorable demands of the laws of thought. Is the marriage bond a bond between two? Can it exist at all if both are not bound? If both are bound, how can either be free? How can a second union in the one be adultery, while in the other it is Christian marriage?

This method of approaching the question has hardly received in the Anglican communion all the consideration which it deserves. The matter is indeed of such moment that it may rightly be demanded of those who venture to pronounce a judgment upon it that they shall give adequate consideration to all the evidence which Holy Scripture and Christian history can afford; but it may no less be demanded of them that, before a decision is resolved upon, they shall face the logical difficulty also, and be prepared either to show its fallacy or to accept its conclusion.

The entire evidence as to the indissoluble character of the bond of Christian matrimony may now be summarised.

Summary
of the
entire
evidence
as to indis-
solubility.

In Holy Scripture the commonly-accepted reading of S. Matthew xix. 9 appears to countenance divorce with remarriage in the case of adultery, but an examination of the original documentary authorities shews that there are such widely different readings of the verse that it cannot be relied upon to support any argument, and also that there is great probability that the original reading does not contemplate remarriage at all. It is remarkable that none of the writers of the first three centuries quote the passage as having any bearing on the question of remarriage. If S. Matthew xix. 9 does not contemplate remarriage after divorce, it cannot be said that any other passage in the New Testament necessarily does so.

Passing on to the evidence of the Church in history, the first three centuries afford no single instance of a writer who approves remarriage after divorce in any case during the lifetime of the separated partner, while there are repeated and most decided assertions of the principle that such marriages

are unlawful. On the other hand, Tertullian and Origen both make mention of Christians who had availed themselves of the facility of the secular law to contract new marriages, and Origen says that the persons to whom he refers were permitted to marry by certain governors of the Church. In the period from Constantine to Justinian, the Churches of the West are more decided in their prohibition of remarriage than the Churches of the East. In the West the Council of Arles and the African Code, with S. Ambrose, S. Jerome, and S. Augustine, decline to admit remarriage after a divorce for adultery even in the case of the unoffending husband. On the other hand Lactantius and Ambrosiaster admit remarriage after a divorce for adultery. In the East S. Basil does not approve of remarriage in any case, but is not prepared to visit such remarriage with harsh discipline in the case of the man. S. Epiphanius and S. Asterius admit remarriage. S. Gregory Nazianzen is uncertain, S. Timothy of Alexandria oracular, Theodoret contradictory. S. Chrysostom is against remarriage. Speaking generally, this period from Constantine to Justinian shews the Western Churches maintaining the entire indissolubility of Christian marriage, while the Churches of the East give an uncertain sound.

From the time of Justinian the Churches of the East concede, without difficulty, the right of remarriage after divorce to the innocent husband, though not to the guilty wife. Remarriage is also allowed after divorce for many other causes assigned. In the West, from the time of Justinian, the Churches of Italy appear to have maintained the indissolubility of Christian marriage, while beyond the Alps there are traces of a long and difficult struggle with the license of the secular laws and the lax customs of the peoples. From the time of Gratian, however, the indissolubility of Christian marriage was universally acknowledged in the West. As regards the Churches of the British Isles, there was, before the Norman Conquest, some diversity of view, but from the Norman Conquest onwards the indissolubility of Christian marriage has been accepted.

Finally, as regards the permission of remarriage sometimes

accorded to the innocent party while the remarriage of the guilty party is accounted adultery, the laws of reason may require it to be explained how, when the bond necessarily binds two, one can be bound and the other free.

The chapter may be brought to a close with a statement of the practical conclusions which the writer ventures to deduce from it.

CONCLUSIONS.

1. *The bond (vinculum) of Christian marriage is indissoluble except by death.*
2. *A husband may put away his wife for adultery, but neither party may remarry.*
3. *A husband is bound to put away his wife for her adultery, if the adultery continue; otherwise he is guilty of connivance of adultery, and of the confusio prolis.*
4. *A wife may put away her husband for adultery, but neither party may remarry.*
5. *A wife is not bound to put away her husband, even if the adultery continue.*
6. *A husband may restore an adulterous wife on her penitence and amendment.*
7. *A husband may not restore an adulterous wife while her adultery continues.*
8. *A wife may receive again an adulterous husband, whether he be penitent, or continue in his sin.*

CHAPTER VIII

OF THE REMARRIAGE OF CONVERTS, AND OF MIXED MARRIAGES

Intro-
ductory
Statement.

IT will have been noticed that in treating of the divorce of baptized persons united in the bonds of Holy Matrimony, instances of divorce, where either or both of the parties were non-Christians, were usually avoided. The principles which were arrived at in the chapters dealing with marriage outside Christianity will sufficiently indicate the reason; and before proceeding to a systematic examination of authorities, it may be well to state here what those principles seem to involve.

After the Fall GOD was pleased to suffer even the chosen people so far to stray from the purity of marriage as Divinely instituted, that they were in the habit of practising both divorce and polygamy without incurring either denunciation or penalty; and the license which was assumed by the chosen people was, speaking generally, as largely assumed by the rest of mankind. It was the marriage of persons in the state of sin who, even if they maintained an union at once indissoluble and exclusively faithful, were yet incapable of the holiness of the marriage union, as it was possible either in the innocence of Paradise or in the redeemed life of the members of Christ.¹ The attitude of the Christian Church towards the marriages of persons outside her bounds would naturally follow the attitude of GOD towards the marriages of the chosen people. Their

¹ Cf. S. Augustine, *De conjugiiis adulterinis*, I. cap. 18: "Infidelis hominis fornicatio est major in corde; nec vera ejus pudicitia cum conjuge dici potest, quia *Omne quod non est ex fide, peccatum est.*"

unions are what they are because, so far as they go without corruption, they are the survivals of the Divine institution of marriage. Hence they are in all possible ways to be respected. If persons so united will be mutually faithful till death sever the tie, it is a great gain. When all is said of the corruption of the Fall, there is so much of the original institution in such marriages that their continuance wherever possible is to be sought, notwithstanding the fact that sin has thrown the Divine institution woefully out of gear. But the high conditions of Christian matrimony are not to be rigidly imposed upon those non-Christians who decline to accept them.

If they will sever their unions by divorce, or mar the character of them by polygamy, the Church has no more condemnation for such persons than God had for those who acted similarly among the chosen people. They do not well, but yet they are not to be judged by a standard which is not theirs. Consequently, in the case of two persons who were married outside the Christian Church, and afterwards divorced in accordance with the conditions of their marriage, the Church has not commonly maintained that such persons must be held as bound indissolubly by the tie which they have repudiated; and if either of these persons has at a later period sought baptism after contracting another union, it has not usually been contended that the convert was under any obligation to repudiate the actual non-Christian partner in favour of the partner who had preceded. It was, however, impossible to overlook the fact that when one of two non-Christian partners was converted and baptized, while the other remained unbaptized, a very real difficulty occurred. If, on the one hand, respecting the existing *unitas carnis* and all which it might still retain of the primal marriage blessing, the Christian partner desired and was permitted to continue the bond, there at once arose an inequality of relationship which, under the ordinary circumstances of Christian marriage, would constitute sufficient ground for a declaration of nullity. To justify the Christian partner in continuing the union, it was necessary that from the moment of baptism he or she should accept the

union as being for himself or herself Christian or Holy Matrimony. The copula after baptism was for the Christian partner either fornication involving a fall from grace, or it was the consummation of Christian marriage, with all that it implied; of marriage, that is to say, which involved at once indissolubility and exclusive faithfulness. Meanwhile, however, the non-Christian partner was no more bound than he had been before. Divorce was always admittedly before him as a possibility under the Roman law. In Eastern lands he was not more debarred from the practice of polygamy; and in any case, whatsoever the particular laws or customs of his community might or might not allow, he was not a member of Christ, and was not to be judged, even by the Church of Christ, as though he were bound by the requirements of such membership. The Christian was bound as the non-Christian was not, the contract was not fairly mutual, and in the case of the marriage of two Christian persons, where the contract was thus one-sided, the whole tenor of Christian discipline would have pronounced the marriage null and void. Thus considered, it is not difficult to decide that unequal marriages between Christians and non-Christians are inadmissible in all cases where the unequal condition exists prior to the proposed marriage; and, as will be seen, this is the teaching of Holy Scripture and of Church authority, notwithstanding the occurrence and partial recognition of many instances of such marriage. The case of the Christian convert, however, is one of much more difficulty. It is certainly a case of unequal contract, and if the Christian partner, in view of this inequality and of the many difficulties of the union, elected to claim a divorce, and to marry another and a Christian partner, the formal difficulty arising from the unequal relations was certainly removed; but with it went all that was sacred in the earlier union, which had its mystery, and which, but for this severance, might have been life-long and entirely faithful. Here was a difficulty which called for authoritative solution, and the Corinthians appear to have addressed S. Paul with regard to it. S. Paul's decision, if the usual explanation of it be accepted, meets the dilemma by indicating that in the case of Christian converts there may be

expected a special grace of God, to sanctify their unions to them as being, so far as concerns not only themselves but their children, blessed with the full blessing of Christian marriage. There is indeed no indissoluble bond, and if the unbeliever break the bond, it is broken; yet, seeing that there was a sacredness about the former union, and that God has specially met the case of the Christian convert, such convert should maintain the former marriage if he can. We may now consider S. Paul's statement more at length as the first of the Scriptural authorities.

I. HOLY SCRIPTURE.

(i.) 1 *Corinthians* vii. 12–16:

Τοῖς δὲ λοιποῖς ἐγὼ λέγω, οὐχ ὁ Κύριος, εἰ τις ἀδελφὸς γυναῖκα ἔχει ἄπιστον, καὶ αὐτὴ συνευδοκεῖ οἰκεῖν μετ' αὐτοῦ, μὴ ἀφίετω αὐτήν· καὶ γυνὴ ἥτις ἔχει ἄνδρα ἄπιστον, καὶ αὐτὸς συνευδοκεῖ οἰκεῖν μετ' αὐτῆς, μὴ ἀφίετω αὐτόν. ἡγιασται γὰρ ὁ ἄνθρωπος ὁ ἄπιστος ἐν τῇ γυναικί, καὶ ἡγιασται ἡ γυνὴ ἡ ἄπιστος ἐν τῷ ἀνδρὶ· ἐπεὶ ἅρα τὰ τέκνα ὑμῶν ἀκάθαρτά ἐστι, νῦν δὲ ἅγια ἐστίν. Εἰ δὲ ὁ ἄπιστος χωρίζεται, χωρίζεσθω. οὐ δεδούλωται ὁ ἀδελφὸς ἢ ἡ ἀδελφὴ ἐν τοῖς τοιοῦτοις· ἐν δὲ εἰρήνῃ κέκληκεν ἡμᾶς ὁ Θεός. τί γὰρ οἶδας, γύναι, εἰ τὸν ἄνδρα σώσεις; ἢ τί οἶδας, ἄνερ, εἰ τὴν γυναῖκα σώσεις;

But to the rest speak I, not the Lord: If any brother hath a wife that believeth not, and she be pleased to dwell with him, let him not put her away. And the woman which hath an husband that believeth not, and if he be pleased to dwell with her, let her not leave him. For the unbelieving husband is sanctified by the wife, and the unbelieving wife is sanctified by the husband: else were your children unclean; but now are they holy. But if the unbelieving depart, let him depart. A brother or a sister is not under bondage in such cases: but God hath called us to peace. For what knowest thou, O wife, whether thou shalt save *thy* husband? or how knowest thou, O man, whether thou shalt save *thy* wife?

There are two words in this passage which call for special comment—the words *δεδούλωται* and *χωρίζεται* (*χωρίζέσθω*).

a. *δεδούλωται*.

If the unbelieving *χωρίζεται*, *depart* or *be the cause of separation*, a brother or a sister is not under bondage in such cases. It is quite clear that in S. Paul's view the believer is not under bondage in such a case to live with the unbeliever, who is the cause of the severance. But is the believer,

notwithstanding, under bondage to remain unmarried? The following points may help to a decision:

(a) The interpretation which regards δεδούλωται as meaning "not bound" to insist on cohabitation is so obvious a truism, and so inadequate an answer to difficulties which must have been actual, that it must be rejected as insufficient. The alternative meaning is "not bound" by the marriage bond.

(β) "The contrast between δούλος with its cognates and ἐλεύθερος with its cognates is of very frequent occurrence in the New Testament. I reckon that there are at least twenty-one passages where it occurs, of which fifteen are in S. Paul's Epistles." This seems to confirm the idea that οὐ δεδούλωται is equivalent to ἐλεύθερός ἐστιν; and then we quote, in illustration of the Apostle's meaning, verse 39 of this very chapter:

Γυνὴ δέδεταί νόμῳ ἐφ' ὅσον χρόνον ζῇ ὁ ἀνὴρ αὐτῆς· ἐὰν δὲ κοιμηθῇ ὁ ἀνὴρ αὐτῆς, ἐλευθέρα ἐστὶν ᾧ θέλει γαμηθῆναι, μόνον ἐν Κυρίῳ.

"The freedom spoken of in both verses is a freedom to marry." (Fr. Puller.)¹

(γ) The instruction to a wife united in Christian marriage is explicit in its prohibition of remarriage: "But and if she depart, let her remain unmarried." (v. 11.) The instruction to a convert forsaken by the non-Christian partner is, "Let him depart. A brother or a sister is not under bondage in such cases." These two instructions, only four verses apart, have the air of a contrast. The ordinary Christian wife, who is separated from her husband, is not free to marry again; the deserted convert is free to marry again.

(δ) The vast preponderance of Christian authority has understood οὐ δεδούλωται to mean "is not bound" by the bond of marriage.²

¹ In the *Occasional Papers* of the Oxford Mission to Calcutta.

² See authorities to be presently cited.

- (ε) The principles at which we have arrived point to the same conclusion. The marriage never has been yet Christian matrimony, and cannot bind the partner who is becoming a Christian more than the partner who remains an unbeliever. Indissolubility probably formed no part of the contract. Certainly there has been as yet no membership in the body of Christ, imposing the obligations of Christian marriage on either partner. If the unbeliever may effect a divorce, what is open to the unbeliever is no less open to the partner about to become a Christian. There is no indissoluble bond.

It is concluded that the convert in the case specified by S. Paul "is not bound," in the sense that he or she is free to marry again.

b. χωρίζεται, χωρίζεσθω.

This word is rendered in the English versions *depart*, and in the Vulgate *discedat*.

A. V. But if the unbelieving depart, let him depart.

R. V. Yet if the unbelieving departeth, let him depart.

Vulgate. Quod si infidelis discedit, discedat.

The Greek commentators, however, do not confine the word to this meaning of *departure*. S. Chrysostom, explaining the passage, writes: "But what does that mean?—Εἰ δὲ ὁ ἄπιστος χωρίζεται. For instance, if he command thee to sacrifice, and to communicate with him in impiety by reason of the marriage, or (if he command thee) to retire, it is better that the marriage rather than that piety should be torn asunder."¹

S. Chrysostom evidently takes the word χωρίζεται as a causative middle: "If the unbeliever is the cause of separation, let him be the cause of separation" must be the translation required by S. Chrysostom's explanation. Similarly Theophylact—"Εἰ δὲ ὁ ἄπιστος χωρίζεται, χωρίζεσθω. As if he command thee either to partake with him in unbelief, or to recede from the marriage, then let the marriage be

¹ Homily xix. on 1 Cor. in loco.

receded from. For it is better that the marriage rather than that piety should be dissolved."¹ Theophylact has probably derived his inspiration here from S. Chrysostom; but both writers are accomplished masters of the Greek language, and both are agreed in understanding χωριζέσθαι as meaning to *cause to separate* rather than merely to *depart*.

The point is a most important one in practice. Thus a Musulman husband, whose wife was a convert to Christianity, might not choose to depart from her, but might prefer to retain her under a home tyranny which should simply allow no scope for the exercise of her faith. In such a case, according to S. Chrysostom, the husband is the cause of separation, which thereupon becomes thoroughly justified, the wife being no longer bound. The interpretation of S. Chrysostom seems preferable to that of the Vulgate and of the English versions, which only authorise separation when the unbeliever departs. It is not only the (1) explanation which commends itself as the obvious meaning of the Greek to commentators whose native language was Greek, and (2) an explanation which the Greek certainly covers without any straining; but (3) is entirely in accordance with the dictates of common sense working from the principles we have thought to discern. The marriage outside Christianity had no indissoluble *vinculum*, but was nevertheless to be guarded, and by continuance after baptism hallowed, if this were at all reasonably possible. Failing such reasonable possibility, it must fall to the ground.

We are now in a position to understand S. Paul's instruction. The convert is instructed not to put away an unbelieving partner who is not the cause of separation. If such an unbelieving partner συνευδοκεῖ οἰκεῖν, not merely is "willing to abide," but rather is "in hearty agreement to abide," then the marriage is perfectly permissible to the Christian partner. If, however, the unbeliever is the cause of separation, whether by desertion or by such other causes as those which S. Chrysostom indicates, then the Christian partner is not bound; that is to say, he or she is free to marry again.

¹ On 1 Cor. in loco.

It should not be overlooked that this instruction of S. Paul, the "Pauline privilege" (*privilegium Paulinum*), as it has been commonly called, is a tremendous concession. But the concession would appear to lie, not so much in the permission given in certain cases to dissolve a union which never had the character of indissolubility, as in the permission given to the Christian partner to remain united to the unbelieving partner under necessarily unequal conditions. S. Paul therefore proceeds to explain how the grace of God makes this possible. "The unbelieving husband is sanctified by the wife, and the unbelieving wife is sanctified by the husband, else were your children unclean, but now are they holy." Not, of course, that the union sanctifies the unbelieving husband as baptism would sanctify him, by giving him a holiness in his own being, but that he is sanctified *to the wife* for the use of marriage by her own membership in Christ, so that to her the union is no unequal union of a member of Christ with heathen pollution, but has the full character of Christian matrimony. Consequently, again, as the union had for her the full character of Christian matrimony, so also the children were before God not unclean, as being the children of a polluted and unworthy association, but they were *holy*, that is to say, they had a certain blessedness and predisposition to holiness even before Baptism. "The generation of the faithful shall be blessed,"¹ with a blessedness given to them, no doubt, as the generation of the faithful. In short, Christians were to understand that, abnormal as such unions undoubtedly were, the preservation of all that was sacred in the first tie was so dear to God, that He would rather supply a special grace of sanctification to overcome the difficulties of the union, than that it should be dissolved in favour of some new connexion, which, while it might have formal regularity, would only have it at the expense of severing the prior tie.

It is not, however, to be inferred from this permission to maintain an existing union under circumstances of grave inequality, that it could ever be right for a Christian to enter

¹ Ps. cxii. 2.

upon such an unequal union after baptism. Even between two Christians a marriage in which one declined to accept indissolubility or monogamy would be no marriage: *a fortiori* would this be the case where one of the parties was a non-Christian; and even if the non-Christian were prepared to undertake these two obligations of Christian matrimony, he could not supply the sanctified character of the union which could only come in the ordinary course from the two-fold membership in the body of Christ. Nor, under the circumstances, could the Christian partner reasonably expect to be supplied with that extraordinary and special grace of God which was vouchsafed to the convert continuing a prior union, in order to sanctify that union to himself and to his children.

(ii.) 1 *Corinthians* vii. 39 :

Ἡ γυναὶκὶς δεδεσται νόμῳ ἐφ' ὅσον χρόνον ζῇ ὁ ἀνὴρ αὐτῆς· ἐὰν δὲ κοιμηθῇ ὁ ἀνὴρ αὐτῆς, ἐλευθέρα ἐστὶν ᾧ θέλει γαμηθῆναι· μόνον ἐν Κυρίῳ.

The wife is bound by the law as long as her husband liveth; but if her husband be dead, she is at liberty to be married to whom she will; only in the Lord.

The expression "in the Lord" has been commonly understood to be equivalent to "with a Christian."¹ The statement that a widow is "at liberty to be married to whom she will, only in the Lord," is as much as to say that she is not at liberty to marry except "in the Lord." The verse thus amounts to an express prohibition of mixed marriages. So Tertullian: "But of marrying in the Lord, when he says, *only in the Lord*, he is now not persuading, but expressly commanding."²

(iii.) 2 *Corinthians* vi. 14—vii. 1 :

Μὴ γίνεσθε ἐτεροζυγούμενοι ἀπίστοις· τίς γὰρ μετοχὴ δικαιοσύνης καὶ ἀνομίας; τίς δὲ κοινωνία φωτὶ πρὸς σκότος; τίς δὲ

Be ye not unequally yoked together with unbelievers: for what fellowship hath righteousness with unrighteous-

¹ Tertullian, *Ad Uxorem*, lib. ii. c. 2: "Id est, in nomine Domini, quod est indubitate, Christiano." Theodore in *loco*: μόνον ἐν κυρίῳ, τούτέστιν ὁμοπίστῳ. S. Jerome, ad Ageruchiam: "Quodque addidit, tantum in Domino, amputat Ethnicorum conjugia." Yet S. Augustine says in the *De Conjugiis Adulterinis*, i. 25, "Quod duobus modis accipi potest: aut Christiana permanens, aut Christiano nubens"; and S. Chrysostom, in *loco*, μετὰ σωφροσύνης, μετὰ κοσμιότητος.

² Tertullian, *Ad Uxorem*, ii. 1.

συμφώνησις Χριστῷ πρὸς Βελιάλ; ἢ τίς
 μέρος πιστῷ μετὰ ἀπίστου; τίς δὲ συγκα-
 τάθεσις ναῦ Θεοῦ μετὰ εἰδώλων; ὑμεῖς
 γὰρ ναὸς Θεοῦ ἐστε ζῶντος, καθὼς εἶπεν
 ὁ Θεός, "Ὅτι ἐνοικήσω ἐν αὐτοῖς, καὶ ἐμ-
 περιπατήσω, καὶ ἔσομαι αὐτῶν Θεός, καὶ
 αὐτοὶ ἔσονται μοι λαός. διὸ ἐξέλθετε ἐκ
 μέσου αὐτῶν καὶ ἀφορίσθητε, λέγει
 Κύριος, καὶ ἀκαθάρτου μὴ ἄπτεσθε·
 καὶ ἐγὼ εἰσδέξομαι ὑμᾶς, καὶ ἔσομαι ὑμῖν
 εἰς πατέρα, καὶ ὑμεῖς ἐσεσθέ μοι εἰς υἱούς
 καὶ θυγατέρας, λέγει Κύριος παντοκράτωρ.
 ταύτας οὖν ἔχοντες τὰς ἐπαγγελίας, ἀγα-
 πητοί, καθαρίσωμεν ἑαυτοὺς ἀπὸ παντὸς
 μολυσμοῦ σαρκὸς καὶ πνεύματος, ἐπιτελ-
 ούντες ἀγιωσύνην ἐν φόβῳ Θεοῦ.

ness? and what communion hath light
 with darkness? and what concord
 hath Christ with Belial? or what
 part hath he that believeth with an
 infidel? and what agreement hath the
 temple of God with idols? for ye are
 the temple of the living God; as
 God hath said, I will dwell in them,
 and walk in *them*: and I will be their
 GOD, and they shall be my people.
 Wherefore come out from among them,
 and be ye separate, saith the Lord, and
 touch not the unclean *thing*; and I
 will receive you, and will be a Father
 unto you, and ye shall be my sons and
 daughters, saith the Lord Almighty.
 Having therefore these promises, dearly
 beloved, let us cleanse ourselves from
 all filthiness of the flesh and spirit,
 perfecting holiness in the fear of God.

This passage is important or not in the present connexion,
 according as it is taken to have special reference to mixed
 marriages (and other sexual connexions) between Christians
 and heathens, or to apply generally to all unhallowed communi-
 cations between them. If the intention is general, while, no
 doubt, mixed marriages would be included under it, the value
 of the passage as a direct prohibition of such marriages
 becomes small. If, on the other hand, marriage is the sole or
 chief matter in the mind of the writer, the prohibition of
 mixed marriages must be taken as of a definite and binding
 character. The context hardly helps to a conclusion on this
 point. Stanley remarks: "We now arrive at a remarkable
 dislocation of the argument. On the one hand the passionate
 appeal to the Corinthians, which was begun in vi. 11-13, is
 continued without even the appearance of an interruption in
 vii. 2. . . . On the other hand, the intervening passage—vi. 14-
 vii. 1—whilst it coheres perfectly with itself, has not the
 slightest connexion with the immediate context either before
 or after."¹ Most modern commentators treat the passage as
 referring to all unhallowed communications between Christians

¹ Stanley, *The Epistles of S. Paul to the Corinthians*, 1855, vol. ii. p. 128.

and non-Christians. On the other hand, there is much to be said for the view that this remarkably disconnected passage is directed solely or mainly against mixed marriages. The following points may be noticed:

(1) ἑτεροζυγούντες, "heterogeneously yoked." The word, which does not occur elsewhere, is evidently formed from ἑτερόζυγος in the Septuagint Version of Lev. xix. 19, "Thou shalt not let thy cattle gender with a diverse kind." Stanley remarks: "Hence the verb must mean (not 'to be unevenly yoked, one bearing the yoke more heavily than the other,' but) 'to be joined with a wrong yoke-fellow,' as ὁμοζυγεῖν is 'to be joined with a right yoke-fellow.' The form of the word indicates that the chief, though not the only, allusion is to marriage."¹

(2) The argument that Christians are themselves the temple of GOD is used by S. Paul in 1 Cor. vi. 19, to emphasize the necessity of purity in sexual relations. It is, therefore, entirely suitable to the subject of mixed marriages.

It may be said of the teaching of the New Testament on the subject of mixed marriages, that while a special provision is made for the case of a convert continuing a prior connexion, there is nothing to warrant the view that a Christian is at liberty to enter upon a new relation of marriage with one who is not a Christian. The very explanation of the concession made in the one case, that the non-Christian partner "is sanctified" by the Christian partner, is a strong argument against the possibility of the concession in the other case. Such sanctification is clearly necessary to make marriage properly Christian marriage for the Christian partner; and it is not to be reasonably supposed that a Christian who deliberately marries one who is not a member of Christ will be supplied with any such power of sanctification. This being so a specific prohibition of such marriages might well be looked for; and in the passage 1 Cor. vii. 39 such a prohibition is almost certainly found. It is probable, but not certain, that the same prohibition is to be understood in the passage 2 Cor. vi. 14-vii. 1.

¹ Stanley, *in loco*

II. THE CHURCH IN HISTORY.

A. *To the Conversion of Constantine (314 A.D.).*

AUTHORITIES.

INSCRIPTION AT MESERGA, IN THE TUNISIAN DISTRICT.¹

PESCENNIA QUODVULTDEUS
H. M. F. BONIS NATALIBUS
NATA MATRONALITER
NVPER VXOR CASTA
MATER PIA GENVIT FILIOS
III. ET FILIAS II. VIXIT
ANNIS XXX. VICTORINA
VIXIT ANNIS VII
SVNNIVS VIXIT ANNIS
III MARCVS VIXIT
ANNIS II. MARCEL
LVS VIXIT ANNO I
FORTVNATA VIXIT ANNIS
XIII M. VIII MARCELLVS
PROCOS.....CIV
SED ET FILIIS ET
FILIABUS NOSTRIS ME VI
VO MEMORIAM FECI
OMNIBVS ESSE PEREMNEM

TERTULLIAN.

Ad Uxorem, lib. ii. c. 1.²

De nubendo vero in Domino, cum dicit: *tantum in Domino*, jam non suadet, sed exserte jubet. Igitur in ista maxime specie, nisi obsequimur, periclitamur, quia suusum impune quid negligas, quam jussum, quod illud de consilio veniat et voluntati proponatur, hoc autem de potestate descendat et necessitate obligetur, illic libertas, hic contumacia delinquere videatur.

Lib. ii. c. 2.³

Igitur cum quaedam istis diebus nuptias suas de Ecclesia tolleret, id est, gentili conjungeretur, idque ab allis retro factum recorderer, miratus aut ipsarum petulantiam aut consiliuriorum praevaricationem, quod nulla scriptura ejus facti licentiam profert. Numquid,

¹ Maffei, *Museum Veronense*, p. 464, No. 6.

² Migne's Ed. tom. i. p. 1290.

³ *Ibid.* tom. ii. pp. 1291-2.

inquam, de illo capitulo sibi blandiuntur primae ad Corinthios, ubi scriptum est: *Si quis frater infidelem habet uxorem, et illa matrimonio consentit, ne dimittat eam; similiter mulier fidelis, infideli nupta, si consentaneum maritum experitur, ne dimiserit eum; sanctificatur enim infidelis vir a fidele uxore et infidelis uxor a fidele marito; caeterum immundi essent filii vestri.* Hanc monitionem fors de fidelibus junctis simpliciter intelligendo putent etiam infidelibus nubere licere. Qui ita interpretatur, absit ut sciens se circumscribat.

Caeterum manifestum est scripturam istam eos fideles designare, qui in matrimonio gentili inventi a Dei gratia fuerint, secundum verba ipsa: *Si quis, inquit, fidelis uxorem habet infidelem.* Non dicit, “uxorem ducit infidelem.” Ostendit jam in matrimonio agentem mulieris infidelis, mox gratia Dei conversum, perseverare cum uxore debere, scilicet properea, ne quis fidem consecutus putaret sibi devertendem esse ab aliena jam et extranea quodammodo foemina. Adeo et rationem subjicit, in pace nos vocari a Domino, et posse infidelem a fidele per usum matrimonii lucriferi. Ipsa etiam clausula hoc ita intelligendum esse confirmat, *ut quisque, ait, vocatur, a Domino ita perseveret.* Vocantur autem gentiles, opinor, non fideles.

Quod si de fidele ante matrimonium pronuntiasset absolute, permiserat sanctis vulgo nubere; si vero permiserat, nunquam tam diversam atque contrariam permissui suo pronuntiationem subdidisset, dicens, *Mulier defuncto viro libera est: cui vult nubat, tantum in Domino.* Hic certe nihil retractandum est; nam de quo retractari potuisset, Apostolus cecinit: ne quod ait, *cui velit nubat*, male uteremur, adjecit, *tantum in Domino*, id est in nomine Domini, quod est indubitata, christiano. Ille igitur Apostolus sanctus, qui viduas et innuptas integritati perseverare mavult, qui nos ad exemplum sui hortatur, nullam aliam formam repetundarum nuptiarum nisi in Domino praescribit, huic soli conditioni continentiae detrimenta concedit: *Tantum, inquit, in Domino.* Adjecit pondus legi suæ tantum. Quo sono et modo enuntiaveris dictum istud, onerosum est; et jubet, et suadet, et praecipit, et hortatur, et rogat, et comminatur; districta expedita sententia est et ipsa sui brevitate facunda. Sic solet divina vox, ut statim intelligas, statim observes. Quis enim non intelligere possit pericula multa et vulnera fidei in hujusmodi nuptiis, quas prohibet, Apostolum providisse, et primo quidem carnis sanctae in carne gentili inquinamentum praecavisse.

Hoc loco dicet aliquis: Quid ergo refert inter eum qui in Matrimonio gentilis a Domino allegitur, et olim, id est, ante nuptias fidelem, ut non proinde carni suae caveant, cum alter a nuptiis infidelis arceatur, alter in iis perseverare jubeatur? Cur si a gentili inquinamur, non ille disjungitur, quemadmodum iste non obligatur? Respondebo: Si spiritus dederit, ante omnia allegans Dominum magis ratum habere matrimonium non contrahi, quam omnino disjungi: denique divortium prohibet, nisi stupri causa, continentiam vero commendat. Habet igitur ille perseverandi necessitatem, hic porro etiam non nubendi potestatem. Tunc si secundum Scripturam qui in matrimonio gentili a fide deprehenduntur, propterea non inquinantur, quia cum ipsis alii quoque sanctificantur: sine dubio isti, qui ante nuptias sanctificati sunt, si extraneae carni commisceantur, sanctificare eam non possunt, in qua non sunt deprehensi. Dei autem gratia illud sanctificat quod invenit. Ita quod sanctificari non potuit immundum est; quod immundum est cum sancto non habet partem, nisi ut de suo inquinet et occidat. Haec cum ita sint, fideles gentilium matrimonia subeuntes stupri reos esse constat et arcendos ab omni communicatione fraternitatis, ex litteris Apostoli dicentis, *cum ejusmodi nec cibum sumendum*. Aut numquid tabulas nuptiales de illo apud tribunal Domini proferemas? et matrimonium rite contractum allegabimus? quod vetuit ipse, non adulterium est? quod prohibitum est, non stuprum est? Extranei hominis admissio minus templum Dei violat, minus membra Christi cum membris adulterae commiscet? Quod sciam, non sumus nostri, sed pretio empti; et quali pretio? sanguine Dei. Laedentes igitur carnem istam, eam laedimus. De proximo quid sibi voluit ille qui dixit, delictum quidem esse extraneo nulare, sed minimum, cum alias, seposita carnis injuria ad Dominum pertinentis, omne delictum voluntarium in Domino grande sit. Quanto enim potestas vitandi fuit, tanto contumaciae crimine oneratur. Recenseamus nunc caetera pericula et vulnera, ut dixi, fidei ab Apostolo provisae, non carni tantum, verum etiam ipsi spiritui molestissima. Quis enim dubitet obliterari quotidie fidem commercio infideli? Bonos corrumpunt mores confabulationes malae; quanto magis convictus et individuus usus? Quaevis mulier fidelis Dominum observet necesse est. Et quemodo potest duobus dominis deservire, Domino et marito, adde, gentili? Gentilem enim observando gentilia exhibebit, formam, exstructionem, munditias saeculares, blanditias turpiores, ipsa etiam matrimonii secreta maculosa; non

ut penes sanctos officia sexus cum honore ipsius necessitatis tanquam sub oculis Dei modeste et moderate transiguntur.

*De Corona, c. xiii.*¹

Coronant et nuptiae sponso, ideo non nubamus ethnicis, ne nos ad idololatriam usque deducant, a qua apud illos nuptiae incipiunt; habes legem a Patriarchis quidem, habes apostolum in Domino nubere iubentem.

*Against Marcion, lib. v. cap. 7.*²

Certe praescribens, *Tantum in Domino esse nubendum*; ne qui fidelis ethnicum matrimonium contrahat, legem tuetur Creatoris, allophyolorum nuptias ubique prohibentis.

*De Monogamia, c. 7.*³

Omnes enim nos fratres sumus: et illa nuptura in Domino habet nubere, id est, non ethnico, sed fratri; quia et vetus lex adimit conjugium allophyolorum.

S. CYPRIAN.

*De Lapsis vi.*⁴

Iungere cum infidelibus vinculum matrimonii, prostituere gentilibus membra Christi.

*Adversus Judaeos, lib. iii. c. 62.*⁵

Cap. 62. Matrimonium cum gentilibus non jungendum.

Apud Tobiam: "Uxorem accipe ex semine parentum tuorum, et noli sumere alienam mulierem quae non est ex tribu parentum tuorum." Item in Genesi: "Mittit puerum suum Abraham, ut de semine suo accipiat Rebeccam filio ejus Isaac." Item in Esdra satis non fuit Deo, cum vastarentur Judaei, nisi alienigenas uxores cum filiis quoque quos ex illis procreaverant reliquissent. Item in Epistola Pauli ad Corinthios prima: "Mulier vineta est quamdiu vivit vir ejus. Si autem dormierit, liberata est, ut cui vult nubat, tantum in Domino. Felicius autem erit, si sic permanserit." Et iterum: "Nescitis quoniam corpora vestra membra Christi sunt? Auferens membra Christi, faciam membra fornicariae? Absit. Aut nescitis quia qui conglutinantur fornicariae unum corpus sunt? Erunt enim duo in una carne. Qui autem se conjunxerit Domino, unus spiritus est." Item ad Corinthios secunda: "Nolite conjungi cum infidelibus. Quae autem participatio est justitiae et iniquitati? aut quae est com-

¹ Migne's Ed. tom. ii. p. 97.

² *Ibid.* p. 487.

³ *Ibid.* p. 938.

⁴ *Ibid.* p. 483.

⁵ *Ibid.* p. 798.

municatio luci ad tenebras." Item de Salomone in Basilion tertio :
 "Et averterunt uxores alienigenae cor ejus post deos suos."

S. HIPPOLYTUS.

*Refutatio ix. 12.*¹

² Καὶ γὰρ καὶ γυναῖξιν ἐπέτρεψεν, εἰ ἄνδρoι εἶεν καὶ ἡλικία γε ἐκκαίοντο ἀναξίῃ, ἢ ἐαυτῶν ἀξίαν μὴ βούλονται καθαιρεῖν διὰ τὸ νομίμως γαμηθῆναι, ἔχειν ἓνα ὃν ἂν αἰρήσωνται σύγκοιτον, εἴτε οἰκέτην, εἴτε ἐλεύθερον, καὶ τοῦτον κρίνειν ἀντὶ ἀνδρὸς μὴ νόμῳ γεγαμημένην. Ἐνθεν ἤρξαντο ἐπιχειρεῖν πιστὰ λεγόμενα ἀτοκίοις φαρμάκοις καὶ περιδεσμεῖσθαι πρὸς τὸ τὰ συλλαμβανόμενα καταβάλλειν, διὰ τὸ μήτε ἐκ δούλου βούλεσθαι ἔχειν τέκνον μήτε ἐξ εὐτελοῦς, διὰ τὴν συγγένειαν καὶ ὑπέρογκον οὐσίαν. Ὅρῳτε εἰς ὅσῃν ἀσέβειαν ἐχώρησεν ὁ ἄνομος μοιχείαν καὶ φόνον ἐν τῷ αὐτῷ διδάσκων.

COUNCIL OF ELIBERIS.³

Canon 10.

Si ea quam catechumenus reliquit, duxerit maritum, potest ad fontem lavacri admitti. Hoc et circa foeminas catechumenas erit observandum. Quod si fuerit fidelis, quae ducitur, ab eo qui uxorem inculpatam reliquit, et eum scierit illum habere uxorem, quam sine causa reliquit; placuit, huic nec in finem dandam esse communionem.

[Posterior hujus canonis pars sic legitur in codice quodam membranaceo.]

Quod si ducitur ab eo qui inculpatam reliquit uxorem, et eum scierit habere uxorem, quam sine causa reliquit; placuit, nec in fine hujus dari communionem.⁴

Canon 11.

Intra quinquennii autem tempora, catechumena si graviter fuerit infirmata, dandum ei baptismum placuit, non denegari.

Canon 15.

Propter copiam puellarum, Gentilibus minime in matrimonium dandae sunt virgines Christianae, ne aetas in flore tumens in adulterio animae resolvatur.

¹ Ed. Duncker, p. 460.

² Von Dollinger reads: Καὶ γὰρ καὶ γυναῖξιν ἐπέτρεψεν, εἰ ἄνδρoι εἶεν καὶ ἡλικία καίονται (or καλοῦντο), ἀναξία, τὴν ἐαυτῶν ἀξίαν ἣν μὴ βούλονται καθαιρεῖν. Διὰ τοῦτο νομίμως γαμηθῆναι ἔχει ἓνα ὃν ἂν αἰρήσωνται σύγκοιτον, κ.τ.λ.

³ Mansi, tom. ii. p. 7.

⁴ Some MSS. read, hujusmodi in fine dare communionem.

Canon 16.

Haeretici si se transferre noluerint ad ecclesiam catholicam, nec ipsis catholicas dandas esse puellas: sed neque Iudaeis, neque haeticis dare placuit; eo quod nulla possit esse societas fidei cum infidei. Si contra interdictum fecerint parentes, abstineri per quinquennium placet.

Canon 17.

Si qui forte sacerdotibus idolorum filias suas junxerint, placuit, nec in fine eis dandam esse communionem.

Canon 78.

Si quis fidelis habens uxorem cum Iudaea vel gentili fuerit moechatus, a communione arceatur: Quod si alius eum detexerit, post quinquennium acta legitima poenitentia poterit dominicae sociari communioni.

Instance of
marriage
between
Christians
and non-
Christians.
Eunice.

In following the subject into the field of Church history, the first enquiry which naturally presents itself will have regard to actual instances of the marriage connexion, or of the repudiation of that connexion, between Christians and non-Christians.

Eunice, the mother of S. Timothy, was a Christian Jewess (*γυναικὸς Ἰουδαίας πιστῆς*),¹ and her husband, S. Timothy's father, was a Greek (*πατὴρ δὲ Ἕλληνας*), possibly a proselyte, certainly a Gentile. It does not, however, appear whether he was living at the time of Eunice's baptism. Probably, from the silence, he was dead.

Marcia.

Marcia (*circ.* A.D. 183), styled by S. Hippolytus the "God-loving concubine of Commodus (*φιλόθεος παλλακὴ Κομόδου*),"² may possibly have been a Christian. She was brought up by the eunuch Hyacinthus, who was a Christian presbyter.³ She used her influence on behalf of the Christians, and sent by Hyacinthus an order for the release of certain Christian prisoners who were working in the mines of Sardinia. The list of these prisoners she had obtained from Victor, the bishop. After the assassination of Commodus she married Eclectus, who is thought by some to have also been a Christian.

¹ Acts xvi. 1.

² S. Hippolytus, *Refutatio* ix. 12 (in some editions c. 7).

³ *Ibid.* Dion Cassius, lxxii. 4, 19, 22.

There is nothing in the *status* of a recognised concubine, as we shall see elsewhere, which would prevent Marcia from continuing the *status* as being to her Christian marriage, if only she had entered upon it prior to baptism. Her education by Hyacinthus would, however, rather imply that if she were a Christian at all, her Christianity dated from early life. Even so, the *inæquale conjugium* would not have been less possible to her as a Christian than any other marriage with a heathen. It was due, doubtless, to her lower social position. Commodus appears to have had no other wife at the same time, and to have given Marcia all the honours of an empress, only that fire was not carried before her.¹ It cannot, however, be said that the Christianity of Marcia is altogether proved.

S. Caecilia (either A.D. 176-180, *Fortunatus*; or circ. A.D. 230, *Symeon Meta.*). If we are to accept the narrative of Symeon S. Caecilia. Metaphrastes,² she was married by her Christian parents to Valerian, a young Roman who was not a Christian. After the marriage ceremonies she revealed to Valerian that she had made a vow of virginity. He permitted her to keep it, and was further prevailed upon to seek Urban the bishop, with a view to receiving baptism at his hands. He was, in fact, baptized, and after his baptism returned to his wife. But then, the story goes on, he found an angel at her side, who promised that Valerian's brother Tiburtius should become a Christian, and foretold that both brothers should receive the crown of martyrdom. The date assigned is A.D. 230, when the persecution under Severus was raging. Turcius Almachius, the prefect of the city, put Valerian and Tiburtius to death, and the martyrdom of S. Caecilia shortly followed. Symeon Metaphrastes, the narrator, lived in the tenth century, though Ceillier and others have sought to assign the legend, as we have it, to the commencement of the fifth century. It may, perhaps, not be a very useful endeavour to seek to distinguish the facts from the additions in such a narrative; but it may be noticed that the attempt of Christian parents to marry their

¹ Herodian, p. 486, Ed. Frankfort, 1590, quoted by von Döllinger, *Hippolytus and Callistus*, which see. (Eng. trans. pp. 173-5.)

² Symeon Metaphrastes, Ed. Migne, tom. iii. p. 163.

daughter to a non-Christian gentleman, while it is an incident of a kind which was almost bound to occur occasionally under the circumstances of life at Rome in the third century, is not the kind of incident which a chronicler of the tenth century would be likely to invent. On the other hand, the prior vow of virginity, unsanctioned by any home consent, while perhaps not without parallel in early times, is exactly the kind of thing which a later chronicler would assume by way of accounting for the fact that the saint, though married, was commemorated as a Virgin Martyr. It does not seem improbable that the true story, if we could arrive at it, would show us the saint sending Valerian to S. Urban, not in order that she might keep a vow of chastity, but that she might keep the apostolic precept not to be "unequally yoked with unbelievers," and that the persecution, by which GOD removed Valerian and herself from further trials, followed with such swiftness as to find the marriage still incomplete. But it is not desirable to dwell upon a conjecture.

Euphrosyne.

Euphrosyne, the mother of S. Clement of Ancyra, is described in the Acts of S. Clement as born of "noble and Christian parents." Notwithstanding the fact that her parents were Christian, she was given in marriage, much against her will, to a heathen husband, of whom it is said that he "often endeavoured to draw her away from the worship of Christ, and to lead her over to the veneration of idols." She endured these attempts with "masculine fortitude," and on her part strenuously endeavoured to influence her husband in the direction of Christianity. He died, however, "persevering in impiety." As S. Clement of Ancyra is stated to have been born in A.D. 250, the marriage of Euphrosyne would occur shortly before that date. She is an instance, therefore, of a Christian lady, born of worthy Christian parents, who was married to a heathen husband in the first half of the third century.¹

S. Juliana.

S. Juliana, who suffered martyrdom under Maximian (A.D. 291-311), is universally represented as having suffered in

¹ *Acta Sanctorum*, Januar. ii. p. 460. (*Acta, auctore anonymo, e veteri Graeco MS. Latine reddita, a Joanne Scapelinck S. J.*)

consequence of her refusal to marry a non-Christian. The "Acts" are not, however, worthy of trust. It is said that she had been betrothed as a child to Eleusius, a senator of Nicomedia. Her father was a persecutor of the Christians. Her mother is described in the "Acts" as shrinking from the "*sacrilegia Martis*," and as not identifying herself with either Christians or heathen. Juliana accepted Christianity; and when she had attained to womanhood, and Eleusius wished to solemnize the marriage, she is said to have replied, "If thou wilt believe in my GOD, and adore the Father, Son, and Holy Ghost, I will accept thee as my husband. But if thou refuse, seek thou another wife."¹

Eleusius informed Juliana's father of this reply, and the father, after coaxing and threatening, had her beaten, and sent her to Eleusius, who was then prefect. In his presence she repeats her condition. He replies, "My lady Juliana, consent to me, and I believe in thy GOD." "Receive the Spirit of GOD, and I will marry thee." "I cannot, lady mine, for if I do the Emperor will hear of it, and, appointing a successor to me, will cut off my head with the sword." Juliana persisted in her refusal, and was in consequence tortured, and at last beheaded.

As has been said, these "Acts" cannot be trusted. Yet if the dialogue recorded is part of an older tradition, it would be very significant. S. Juliana would not have been content with the profession of the mere "adherent" or catechumen. Her husband must have received the "Spirit of GOD," that is to say, have been baptized.

S. Susanna (A.D. 294) is another instance of a martyr who S. Susanna suffered death rather than marry an unbeliever. Diocletian wished to marry her to Maximian. Gabinius, her father, interviewed her in company with his brother Caius, the Bishop of Rome, on the subject of Diocletian's wishes. She expressed herself as holding in utter abhorrence the idea of marriage with "a worshipper of a demon," and as only desiring to be a virgin consecrated to Christ. Her reply was approved

¹ *Acta Sanctorum*. Februar. ii. p. 874. (*Acta auctore anonymo c. xxi. veteribus MSS.*)

by Caius and Gabinius, and they upheld her in her determination to decline the marriage. Her imprisonment and beheadal followed.¹

S.
Anastasia.

S. Anastasia, a noble Roman lady, was the wife of Publius, who was sent to Persia by Diocletian as ambassador. Publius was a *gentilis*, and a fierce enemy of Christianity. On discovering that his wife was a Christian he imprisoned her within his own house, and when he set out for Persia, left her in chains. He died on the journey, and Anastasia, being liberated, devoted herself to the service of the confessors and martyrs of the faith, finally gaining the martyr's crown herself. It is most probable from the narrative that S. Anastasia had become a Christian during her married life, and that she was therefore a case for the "Pauline privilege." She is believed to have suffered martyrdom about A.D. 300.²

The seven instances which have been enumerated afford some curious results. S. Anastasia was probably a case of a wife converted after marriage, and content to abide with the unbelieving husband; and the same would doubtless be true of Eunice, unless her husband was dead at the time of her baptism, or himself became a convert. The other five instances illustrate the question of mixed marriages entered upon as such. In two of these five cases, viz., in the cases of Marcia and of Euphrosyne, the union was completed notwithstanding the difference of faith, though Euphrosyne is reported to have submitted to her marriage only with reluctance. In the other three cases, those of S. Caecilia, S. Juliana, and S. Susanna, Christian maidens resisted the unequal yoke; and all three suffered martyrdom in consequence, the last two as the direct result of their resistance, and S. Caecilia more indirectly. The attitude of the parents and friends is a further indication of the prevalent confusion of practice. The Christian parents of S. Caecilia, and those of Euphrosyne, forced upon their daughters marriages with non-Christian husbands. In the case of S. Susanna, Gabinius approved the resistance of his daughter.

¹ Baronius, *Annal.* ad ann. 294 (Lucae 1738, tom. iii. p. 268).

² *Ibid.* ad ann. 300 (tom. iii. p. 292).

The notices of S. Cæcilia, Euphrosyne, S. Juliana, S. Susanna, and S. Anastasia are all taken from "Acts" and other narratives, none of which rank high as authorities. Yet there is nothing to indicate that the confusion of practice, to which they witness, is unlikely to be a true presentation of the facts. S. Cyprian finds in the prevalence of mixed marriages in the second century in Africa a crying provocative of the wrath of God.¹ The same confusion of practice is found to prevail in the age immediately following, and is there witnessed by the best authorities. On the other hand, it would not be familiar ground to the editors and amplifiers of "Acts" in later ages, when such mixed marriages were practically unknown. To these instances of Christian women married to non-Christian men may be added the name of Pescennia Quodvultdeus, from the inscription at Meserga in the district of Tunis, which is given above from Maffei.² It is assigned by Morelli, from the pro-consulate of C. Quinctilius Marcellus, to the year A.D. 227.³ He concludes, from the name Quodvultdeus, that the wife of Marcellus was at once a Christian and of African race. Possibly Pescennia was the original name, and Quodvultdeus the baptismal name given in the African Church, where the lady may very well have become a convert during the pro-consulate of her husband.

No single instance is known of a mixed marriage where the husband was the Christian and the wife the unbeliever. This circumstance is of interest in connexion with the conclusion that, at least in the upper ranks of society, Christianity numbered fewer men than women.

Of the writers of the first three centuries, the first to be noticed is S. Justin Martyr. The narrative⁴ of the lady who put away a non-Christian husband for certain offences belongs rather to the subject of divorce; but since it has been sometimes held, as by Keble, that this narrative is "virtually a case under 1 Cor. vii. 15," it may be noticed here that since the repudiation of the husband did not occur at the time of the conversion of the wife, but at a later period, and after

Writers:
S. Justin
Martyr.

¹ S. Cyprian, *De Lapsis*, c. 6. ² Maffei, *Museum Veronense*, p. 464, No. 6.

³ Morelli, *Africa Christiana*, ii. p. 91.

⁴ See above, p. 200.

an interval during which marital relations had been continued, the lady must be regarded as bound by the laws of Christian marriage. She does not, indeed, appear to have transgressed them, for there is no mention of her remarriage.

Tertullian. Of the earliest writers, by far the fullest on this subject is Tertullian. In the *Ad Uxorem*, written about A.D. 197-199—while Tertullian was still in the communion of the Church—he tells us that certain women, in forming second marriages, “had not even chosen to remember that they should ‘marry in the Lord.’” These women had presumably availed themselves of the secular facilities of marriage, which were open to them, without obtaining the sanction of the Church to their unions. Commenting on S. Paul’s instruction to marry “in the Lord,” he says that “now he is not persuading, but expressly commanding,” and accordingly to marry otherwise than “in the Lord” is “contumacy.” Tertullian, in common with other Christian writers of the early centuries, understands the phrase “marry in the Lord” to mean marriage with a Christian. A person who offends, as Tertullian says that certain women in his time had offended, by marrying a “Gentile,” is not to excuse himself by reference to the permission given to converts to continue existing unions. “It is manifest that that Scripture indicates those of the faithful who shall have been found by the grace of God when already in Gentile wedlock.” “He shows that one already living in wedlock with an unbelieving woman, and then converted by the grace of God, ought to persevere with his wife, no doubt on this account, lest any, having adopted the faith, should think that he ought to turn away from a woman who was now in some sort an alien and an extern.” “Some one will say, ‘What, then, is the difference between him who, being in wedlock with a Gentile woman, is admitted by the Lord, and one who is a Christian of old, that is, before his marriage, that they should not make provision for the flesh on equal terms, since one is warned off from marriage with an unbeliever, and the other is commanded to persevere in it? Why, if we are polluted by a Gentile, is not the one disunited, as the other is not permitted to become bound?’” Tertullian

replies, "I will answer, if the Spirit shall permit, first of all alleging that the Lord rather approveth that marriage should not be contracted than in any case dissolved; finally, He forbiddeth divorce, saving for the cause of fornication, but commendeth continency. Let then the one have the necessity of abiding, but the other not even the power of marrying. Then if, according to the Scripture, they that are found by faith in marriage with a heathen are therefore not defiled, because with themselves others also become sanctified; without doubt they who before marriage were sanctified, if they be joined with strange flesh, cannot sanctify that wherewith they were not found."

This clear and definite theological ground of distinction leads Tertullian to a no less clear practical conclusion. "It is evident that believers entering into marriage with heathens are guilty of fornication, and must be forbidden all communication with the brotherhood, according to the letters of the Apostle, who saith that with such an one we must not even eat."

Mixed marriages are also condemned in the *De Corona*, the *Treatise against Marcion*, and the *De Monogamia*.

Tertullian, then, is of opinion that the instruction of S. Paul justifies a convert in retaining a non-Christian partner; and he holds that in the case at any rate which S. Paul indicates, the case where the non-Christian partner is willing to abide, the convert is not merely justified in retaining such partner, but that there is imposed upon him "a necessity of perseverance" (*perseverandi necessitatem*). At the same time Tertullian definitely disallows such marriage between one already baptized and a non-Christian; and he holds that any such marriage is an offence calling for excommunication.

S. Cyprian, in his treatise *De Lapsis*, enumerating the many S. Cyprian. faults of the Christians of his day (Bp. A.D. 248-258) condemns the practice of mixed marriages in very strong terms. "To join with unbelievers in the bond of matrimony is to prostitute the members of Christ to the Gentiles."¹ Thus the ground of the condemnation is that the bodies of Christians are members of Christ, and that the bodies of non-Christians are

¹ *De Lapsis*, c. 6.

not members of Christ. Such unnatural unions ought, in the opinion of S. Cyprian, to be ranked among the offences which brought upon the Christians the scourge of the Decian persecution. A chapter of the treatise *Against the Jews* collects all the texts of Holy Scripture which, in S. Cyprian's view, had a bearing on the subject. He evidently understands them to be unanimous in their condemnation of mixed marriages.¹

S. Hippolytus.

One of the charges made by Hippolytus against Callistus, the Bishop of Rome (A.D. 213-223), is of interest in the present connexion. He finds fault with Callistus because he permitted women of senatorial rank, if they were unmarried and in danger of incontinence, to form unions with slaves, with the sanction of the Church. The horror of Hippolytus at marriages not recognised by the Roman law need hardly be considered; but, if the fact be accepted as he states it, what did the action of Callistus mean? It is true that Callistus had been a slave, and that he would doubtless feel keenly the hardship of the legal disabilities to which slaves were subjected. But there is no indication that the action of Callistus was at all in the interest of the slaves. Callistus had made the concession with which Hippolytus charges him, for ladies who were (1) unmarried, and (2) in danger of incontinence (*ἡλικία καίονται*); and the concession was that in such a case the lady might accept as a partner "one (slave) whomsoever she might choose." That the union was from the Christian point of view marriage in the full sense is clear from the words of Hippolytus himself, who says that Callistus held such persons to be lawfully married (*νομίμως γαμηθῆναι*).²

Now the question arises, Why, because a lady was (1) unmarried and (2) in danger of incontinence, should there be any necessity for her to unite herself with a slave in an union which, before the law and in the view of Roman society, was accounted a shameful concubinage? Why should not such a lady marry in her own rank? There appears to be only one satisfactory reason. The Christian converts among men in the

¹ *Adversus Judaeos*, lib. iii. c. 62.

² So, if we accept the reading accepted by von Döllinger. See his *Hippolytus and Callistus*, p. 149. Duncker's reading gives a different sense.

upper ranks of society were as yet few in number; while, on the other hand, it probably was the case in Rome, as in some other places, that there were among the Christians "of honourable women not a few." If, therefore, marriages between Christians and unbelievers were forbidden or discouraged, a certain number of such ladies must either remain unmarried or marry beneath them. In particular cases, rules Callistus, the latter is the preferable course. In other words, the worst of temporal consequences is to be preferred to any profanation of the members of Christ, whether by fornication, or by marriage with unbelievers.

If this explanation be the correct one, it goes far to explain not only the attitude of Callistus, but the indisputable facts of the occasional occurrence of mixed marriages, and of the tendency on the part of Christian parents to seek such marriages for their daughters.¹

The Canons of the Council of Eliberis (between A.D. 306 and 324) are very explicit with regard to marriage relations between believers and unbelievers. The 10th Canon rules that an unbaptized woman, who was once the wife of a catechumen, but whom the catechumen has left, and who has since married another husband, is admissible to baptism. In other words, her marriage outside baptism is not regarded as possessing the indissoluble character. "The same is to be observed with regard to female catechumens." Presumably by this is meant that the man who has been left by a former wife being a *catechumena*, and who has married again, is admissible to baptism. But then follows a remarkable qualification: "But if she shall be a baptized Christian (*fidelis*) who is taken in marriage by him who has deserted a blameless wife, and that when she knows that he has a wife whom he has left without cause, it was determined that communion should not be accorded to her even at the last." This passage is full of indications as to the teaching and practice of the Church. The man, who being unbaptized has married outside Christianity, is not bound by the indissoluble and sacramental bond which the union of

Council of
Eliberis.

¹ On the action of Callistus see the whole passage in von Dellinger, *Hippolytus and Callistus*. English Trans. pp. 147-175.

members of Christ involves. Consequently he is not bound to return to his first partner if, while unbaptized, he has married a second. This will be no less true if his new partner is a baptized Christian woman, if the matter be regarded simply from the point of view of the solubility of the former marriage. But then what business had a baptized Christian woman to marry an unbaptized person at all, in the face of the prohibitions of S. Paul, even though he might be called a catechumen? This brings us to what was evidently one of the great difficulties of the Church of the fourth and fifth centuries. An unbaptized person, who yet professed to be a Christian by conviction, who mixed familiarly, and as in some sort a member, in Christian society, and who was simply putting off his baptism from mixed feelings of superstition and unwillingness to bear the Christian yoke, was a difficult person to class for practical purposes. Strictly speaking he was no Christian, as not being a member of the body of Christ; yet in popular language he would be spoken of as a Christian. When he wished to marry was he to marry a Christian or one outside Christianity? Not the latter if he looked forward to baptism and true membership in Christ, for though the yoke might not be unequal now, in undertaking it he would do so in the full knowledge that it would some day become an unequal yoke. Nor might a Christian woman rightly marry him, for that would be to take the members of Christ and unite them to one who was outside Christ's body, one therefore in union with whom the holiness of marriage could not reasonably be looked for. The right counsel to a catechumen seeking marriage would of course be that he should first by baptism become a member of Christ, and then marry "in the Lord." But immediate baptism was precisely what many of the professing Christians of that age declined to accept. And these secularly-minded Christians were precisely the men who were least likely to live pure lives in the unmarried state. It is not hard to see that in such a condition of things a formidable array of difficulties would arise.

The Council of Eliberis shews us the evil already in force, but, by comparison, only in its beginnings. In the two centuries which were coming, and which were to see the

crowding of the world into the Church, the catechumen who professed the Christian faith, but would not be baptized, became one of the great crosses of the Christian Church. So much was this the case, that the necessary tendency of those ages was to apply as far as might be the discipline of baptized Christians to the catechumens, since these, while professing the Christian faith, were continually profaning their Christian profession, and bringing the Christian name into disrepute among the heathen. Accordingly we shall find in the matter of the remarriage of converts a certain tendency to rigorism in S. Augustine and the Church of his time, which is not found at the end of the first three centuries. By the Christians of the earlier period the catechumen was regarded as a non-Christian till he was baptized; by the Christian of the fourth and fifth centuries the catechumen had too often to be regarded as a sort of Christian who needed to be controlled and restrained.

The Council of Eliberis is then of the highest importance, as shewing us what was probably the traditional practice of the primitive Church, a practice which lasted till the pressure of circumstances led to a more rigorous attitude.

Returning to the consideration of the 10th Canon of the Council, the case supposed is that a Christian woman has married a catechumen or professing Christian as yet unbaptized. If in so marrying him she was not properly aware that he had put away another wife without just ground of complaint, there was nothing in the nature of her union to oblige her to leave him if he would accept baptism. His former marriage was soluble, and his present marriage would become Christian marriage, when he too by baptism became a member of Christ. But if she was aware of his uncalled-for action in divorcing the former blameless wife, then, although that former marriage was no more indissoluble than if she had not known about it, yet her action assumed so much more serious a complexion, that the Council, by ecclesiastical regulation, passed upon her the supreme punishment of the Church. She was to be excluded from communion "even at the last." Apparently she offended in two ways: firstly, in marrying an

unbaptized person at all, an offence, however, which under the difficulties of the time the Council was not prepared to punish severely, unless the offence was complicated; but secondly also, in that, knowing the instructions of S. Paul and the practice of the Church, which would have put pressure on the man to retain his blameless non-Christian wife, if she for her part was willing to abide with him, the Christian woman yet encouraged him to leave his wife, and form a new union with herself.

The 11th Canon is as follows: "But if a *catechumena* should be seriously sick within the space of five years, it was determined that baptism should not be denied to her." This Canon must be read with the 10th; but it is somewhat doubtful whether the *catechumena* alluded to is the *catechumena* of the 10th Canon who had left her husband, or a *catechumena* who, like the *fidelis* of the 10th Canon, had with full knowledge married a man who had put away a blameless wife. The latter is perhaps the more probable. If we adopt it, the Canon will imply that a *catechumena*, with her knowledge of Christian principles and practice, must be subjected to discipline for such conduct, though not in the same measure as the baptized Christian, and that this discipline shall be five years' exclusion from baptism, but that if she be in danger of death at any time before the five years have elapsed, she may be baptized.

The 15th Canon forbids the giving of Christian virgins in marriage to the heathen (*gentilibus*), on the ground of any excess in the number of such Christian virgins. Here is direct evidence of that preponderance of women in the Christian community which is indicated by the action of Callistus. The Canon shews at work the very natural tendency on the part of Christian parents to find, in such preponderance of women, a justification of marriages with heathen husbands. Notwithstanding this tendency, the Council peremptorily forbids all such unions. The 16th Canon again prohibits the marrying of Christian girls to either heretics or Jews, in both cases alike on the ground that there can be no *societas* between a believer and an unbeliever. The 17th Canon visits an extreme case with

the extreme penalty: "If any shall have married their daughters to idol-priests, it was determined that communion was not to be accorded to them even at the last." The 78th Canon is not without interest as to connexion with non-Christians. Whereas in the 69th Canon it is generally laid down that a married man who is unfaithful on one occasion (*semel fuerit lapsus*) is to undergo five years' penance, in the 78th Canon it is provided that when the sin shall have been committed with a Jewess or with a heathen woman, this penalty is only to be imposed when the man himself has not confessed the sin, but some other person has brought it to light. When the man acknowledges the sin, he is indeed to be excluded from communion, but evidently for a shorter term. The Council appears to be of opinion that whereas the body of Christ is doubly polluted when both parties to the sin are Christians, the Christian who sins with one who is not a Christian, serious though his sin is, is yet distinctly less sinful than in the other case.

Summing up the principles of the Council of Eliberis on the subject before us, we find:

- (1) That while Christian marriage, or the marriage of two baptized persons, was regarded as indissoluble, the marriage of a catechumen, or professing Christian not yet baptized, was held to be soluble.
- (2) That the tie which bound a catechumen, or professing Christian not yet baptized, to a blameless non-Christian partner, was nevertheless of strong moral obligation.
- (3) That a baptized Christian was to be strictly forbidden to marry outside the Church, whether heathen, Jew, or heretic, seeing there could be no equality of relation between a believer and unbeliever. (It is clear, however, that the marriage of a baptized Christian with a catechumen did sometimes take place, and that, if inference may be trusted, it did not always meet with grave condemnation.)

These few notices appear to exhaust the evidence of the period prior to Constantine. It is of twofold bearing, partly regarding the divorce and remarriage of converts, and partly the marriage of baptized Christians with persons not baptized.

(a) As regards the divorce and remarriage of converts, there is in this period no voice which denies that the converted partner may continue in marriage with the non-Christian partner if he be willing to do so. Tertullian and the Council of Eliberis are both strongly of this view. Tertullian, in laying stress upon it, does not treat of the permissible case of divorce except by quoting S. Paul's instruction. The Council of Eliberis clearly recognises that the marriage of a catechumen or professing Christian who is unbaptized is soluble, and that such marriages may on occasion be followed by the remarriage of the catechumens. The repudiation of a blameless wife is, nevertheless, highly reprehensible.

(b) As regards the marriage of baptized Christians with persons not baptized, the cases of S. Caecilia and Euphrosyne shew that such marriages, notwithstanding the apostolic precept, were sometimes sought by Christian parents for their daughters. The case of Marcia is probably also a case in which a Christian woman was united to a heathen husband in what the Church treated as marriage, though by the Roman law it was recognised "concubinage." Tertullian says that certain Christian women in his day had married "Gentiles," and the strong protest of S. Cyprian was called forth by his feeling that the practice of such marriages was to be ranked among the causes which brought about the Decian persecution. While, however, the occurrence of instances of mixed marriages is undeniable, they appear to have been distinctly against the mind of the Church. S. Juliana and S. Susanna preferred death to marriage with an unbeliever. S. Caecilia resisted her marriage probably for the same reason. Tertullian says that "believers entering into marriage with heathens are guilty of fornication, and must be forbidden all communication with the brotherhood." S. Cyprian says that such persons "prostitute the members of Christ to the Gentiles." Callistus would rather that a lady of senatorial rank should form an union with

a Christian slave than that she should marry in her rank outside the Church. The Council of Eliberis forbids all such marriages, on the ground that there can be no *societas* between a believer and an unbeliever. There are, however, two points about the prohibitions of Eliberis which need to be noticed. The first, that the marriage of a baptized Christian with a catechumen does not in every case seem to have met with serious condemnation; and the other, that heretics were included with Jews and heathens in the prohibition of mixed marriages, the Church not having yet distinguished between a properly baptized misbeliever and one who was not a member of the body of Christ at all.

B. From Constantine to Justinian.

AUTHORITIES.

COUNCIL OF ARLES.¹

Canon 11.

De puellis fidelibus quae gentilibus junguntur, placuit ut aliquanto tempore a communione separentur.

COUNCIL OF LAODICEA.²

Canon 10.

Περὶ τοῦ μὴ δεῖν τοὺς τῆς ἐκκλησίας ἀδιαφόρως πρὸς γάμον κοινωνίαν συνάπτειν τὰ ἐαυτῶν παιδιά αἵρετικοῖς.

Canon 31.³

"Οτι οὐ δεῖ πρὸς πάντας αἵρετικοὺς ἐπιγαμίας ποιεῖν, ἢ διδόναι υἱοὺς, ἢ θυγατέρας, ἀλλὰ μᾶλλον λαμβάνειν, εἴγε ἐπαγγέλλοιντο χριστιανοὶ γίνεσθαι.

THE AFRICAN CODE.

Can. 21 (=c. 12 of the 3rd Council of Carthage).⁴

Iterum placuit ut filii clericorum gentilibus, vel haereticis, matrimonio non jungantur.

S. BASIL (Ep. 188).⁵

Canon 9.

Ἀλλὰ καὶ ἀπίστου ἀνδρὸς χωρίζεσθαι οὐ προσητέχθη γυνή, ἀλλὰ παραμένειν διὰ τὸ ἀδελφον τῆς ἐκβάσεως. Τί γὰρ οἶδας, γέναι, εἰ τὸν ἄνδρα σώσεις.

¹ Mansi, tom. ii. p. 472.

⁴ *Ibid.* tom. iii. p. 722.

² *Ibid.* p. 564.

⁵ Migne's Ed. tom. iv. p. 677.

³ *Ibid.* p. 568.

S. CHRYSOSTOM.

De Virginitate, § 12.¹

Εἶπε γὰρ ἂν τις πρὸς αὐτόν· Οὐκ ἀνέχομαι εἶναι μετὰ τῆς ἀπίστου πιστὸς ὢν αὐτὸς, μετὰ τῆς ἐναγοῦς ὁ καθαρὸς· αὐτὸς προλαβὼν εἶπες ὅτι σὺ ταῦτα λέγεις, οὐχ ὁ κύριος. Πόθεν οὖν μοι τὸ ἀσφαλὲς καὶ τὸ βέβαιον; Ἀλλ' εἶπεν ἂν πρὸς αὐτὸν ὁ Παῦλος· Μὴ δείσῃς, διὰ γὰρ τοῦτο εἶπον, ὅτι τὸν Χριστὸν ἔχω λαλοῦντα ἐν ἑμαυτῷ· καὶ ὅτι Δοκῶ πνεῦμα ἔχειν Θεοῦ, ἵνα μηδὲν ἀνθρώπινον ὑποπτεύσῃς εἶναι τῶν λεγομένων. Εἰ γὰρ μὴ τοῦτο ἦν, οὐκ ἂν τοσαύτην ἔδωκα τοῖς ἐμοῖς λογισμοῖς τὴν ἐξουσίαν. Λογισμοὶ γὰρ ἀνθρώπων δειλοὶ, καὶ ἐπισφαλεῖς αἱ ἐπίνοιαι αὐτῶν. Δείκνυσι δὲ καὶ ἡ πανταχοῦ τῆς οἰκουμένης Ἐκκλησία τοῦ νόμου τὴν ἰσχὺν μετὰ ἀκριβείας αὐτὸν φυλάττουσα, οὐκ ἂν φυλάξασα, εἰ μὴ πέπειστο ἀκριβῶς εἶναι Χριστοῦ πρόσταγμα τὸ λεχθέν.

*Against those who fast with the Jews.*²

Ἐὰν μὲν γὰρ ἄπιστον ἔχῃ γυναῖκά τις, τουτέστιν, Ἑλληνίδα, οὐκ ἀναγκάζεται ἐκβαλεῖν· Εἴ τις γὰρ, φησὶν, ἔχει γυναῖκα ἄπιστον, καὶ αὐτὴ συνενδοκεῖ οἰκεῖν μετ' αὐτοῦ, μὴ ἀφίετω αὐτήν· ἂν δὲ πόρνην καὶ μοιχαλίδα, οὐ κωλύεται ἐκβάλλειν· Ὅς γὰρ ἂν, φησὶν, ἀπολύσει τὴν γυναῖκα αὐτοῦ, παρεκτὸς λόγου πορνείας, ποιεῖ αὐτὴν μοιχευθῆναι. Ὡστε ἐπὶ λόγου πορνείας ἔξεστιν ἀπολύσαι. Εἶδες φιλανθρωπίαν Θεοῦ καὶ κηδεμονίαν. Ἄν Ἑλληνὶς ᾖ, φησὶν, ἡ γυνή, μὴ ἐκβάλλῃς· ἂν δὲ πόρνη, οὐ κωλύω τοῦτο ποιῆσαι. Ἄν εἰς ἐμέ, φησὶν, ἀσεβήσῃ, μὴ ἐκβάλλῃς· ἂν δὲ εἰς σέ ὑβρίσῃ, οὐδεὶς ὁ κωλύων ἐκβαλεῖν.

Homily xix. on 1 Corinthians. (On 1 Cor. vii. 13, sqq.)³

Ὡςπερ γὰρ περὶ τοῦ χωρίζεσθαι πόρνων διαλεγόμενος τῇ ἐπιδιορθώσει τὸ πρᾶγμα πεποίηκεν ἑύκολον εἰπὼν· καὶ οὐ πάντως τοῖς πόρνοις τοῦ κόσμου τούτου· ὄντω δὲ καὶ ἐνταῦθα πολλῆς προενόησεν εὐκολίας, εἰπὼν· Ἐάν τις ἢ γυνὴ ἄνδρα, ἢ ἀνὴρ γυναῖκα ἔχῃ ἄπιστον, μὴ ἀφίετω αὐτήν. Τί λέγεις; ἂν μὲν ἄπιστος, μενέτω μετὰ τῆς γυναικός· ἂν δὲ πόρνος, μηκέτι; καίτοι γε ἔλαττον ἢ πορνεία τῆς ἀπιστίας. Ἐλαττον μὲν ἢ πορνεία, ἀλλ' ὁ Θεὸς τῶν σῶν φείδεται σφόδρα.

Τοῦτο καὶ ἐν τῇ θυσίᾳ ποιεῖ λέγων· Ἄφες τὴν θυσίαν, καὶ καταλλάγηθι τῷ ἀδελφῷ σου· τοῦτω καὶ ἐπὶ τοῦ τὰ μύρια τάλαντα ὀφείλοντος. Καὶ γὰρ ἐκείνον μύρια μὲν τάλαντα χρεωστοῦντα αὐτῷ οὐκ ἐκόλασεν, ἑκατὸν δὲ δηνάρια τὸν σὺνδουλον ἀπαιτήσαντα ἐτιμωρήσατο.

¹ Migne's Ed. tom. i. p. 341.² *Ibid.* p. 860.³ *Ibid.* tom. x. p. 154.

Εἴτα ἵνα μὴ φοβῆται ἡ γυνὴ ὡς ἀκάθαρτος γεινομένη διὰ τὴν μίξιν, φησὶν· Ἠγίασται γὰρ ὁ ἀνὴρ ὁ ἄπιστος ἐν τῇ γυναικί, καὶ ἡγίασται ἡ γυνὴ ἡ ἄπιστος ἐν τῷ ἀνδρί. Καίτοι εἰ ὁ τῇ πόρνῃ κολλώμενος, ἐν σῶμα ἔστιν, εὐδὸλον ὅτι καὶ ἡ τῷ εἰδωλολάτρῃ κολλωμένη ἐν σῶμα ἔστιν· ἐν μὲν σῶμα ἔστιν, ἀλλ' οὐ γίνεται ἀκάθαρτος, ἀλλὰ νικᾷ ἡ καθαρότης τῆς γυναικὸς τὴν ἀκαθαρσίαν τοῦ ἀνδρὸς, καὶ νικᾷ ἡ καθαρότης τοῦ πιστοῦ ἀνδρὸς πάλιν τὸ ἀκάθαρτον τῆς ἀπίστου γυναικός.

Πῶς οὖν ἐνταῦθα μὲν νενίκηται τὸ ἀκάθαρτον, διὸ καὶ ἐπιτέτρωπται ἡ σιννοισία· ἐπὶ δὲ τῆς πορνειομένης γυναικὸς οὐ κατηγορεῖται ἐκβάλλων αὐτὴν ὁ ἀνὴρ; Ὅτι ἐνταῦθα μὲν ἐλπίς σώζεσθαι τὸ ἀπολωλὸς μέρος διὰ τοῦ γάμου, ἐκεῖ δὲ ὁ γάμος ἤδη διαλέλνται· κακεῖ μὲν ἀρφότεροι διαφθείρονται, ἐνταῦθα δὲ θατέρον τὸ ἔγκλημα. Οἷόν τι λέγω· Ἔστιν ἡ πορνειοθεῖσα καθάπαξ, μιαινά. Εἰ τοίνυν ὁ κολλώμενος τῇ πόρνῃ ἐν σῶμα ἔστι, καὶ αὐτὸς γίνεται μιαινὸς πορνειοῦση μιγνύμενος, διὰ τοῦτο ἀφίπταται ἡ καθαρότης ἅπασα. Ἐνταῦθα δὲ οὐχ οὕτως· ἀλλὰ πῶς; Ἔστιν ἀκάθαρτος ὁ εἰδωλολάτρης, ἀλλ' ἡ γυνὴ οὐκ ἔστιν ἀκάθαρτος. Εἰ μὲν γὰρ ἐκοινωνεῖ αὐτῷ κατὰ τοῦτο, καθὼς ἀκάθαρτος ἦν, λέγω δὲ κατὰ τὴν ἀσέβειαν, ἔμελλε καὶ αὕτη ἀκάθαρτος γίνεσθαι· νυνὶ δὲ ἐτέρως μὲν ἔστιν ἀκάθαρτος ὁ εἰδωλολάτρης, ἐν ἐτέρῳ δὲ αὐτῷ πράγματι κοινωνεῖ ἡ γυνὴ, ἐν ᾧ οὐκ ἔστιν ἀκάθαρτος. Γάμος γάρ ἐστι καὶ μίξις σωμάτων, καθὼς ἡ κοινωνία. Πάλιν τοῦτον μὲν ἐλπίς ἀνακληθῆναι ἐπὶ τῆς γυναικὸς ψεκίωται γὰρ αὕτη· ἐκείνον δὲ οὐ σφόδρα εὐκολον. Πῶς γὰρ ἡ τὸν ἔμπροσθεν ἀτιμύσασα χρόνον, καὶ γεινομένη ἑτερῶν, καὶ τοῦ γάμου τὰ δίκαια ἀφανίσασα, ἀνακαλέσασθαι δυνήσεται τὸν ἡδικοημένον, πρὸς τούτοις καὶ τὸν μένοντα ὡς ξένον; Πάλιν ἐκεῖ μὲν μετὰ τὴν πορνειάν ὁ ἀνὴρ οὐκ ἔστιν ἀνὴρ· ἐνταῦθα δὲ καὶ εἰδωλολάτρις ἡ γυνὴ, τοῦ ἀνδρὸς τὸ δίκαιον οὐκ ἀπόλλυται. Οὐχ ἀπλῶς δὲ σιννοικίζει τῷ ἀπίστῳ, ἀλλὰ τῷ βουλομένῳ· διὸ εἶπε· Καὶ αὐτὸς σιννευδοκεῖ αὐκείν μετ' αὐτῆς. Ποῖον γὰρ, εἰπέ μοι, βλάβος, ὅταν καὶ τὰ τῆς ἐνσεβείας ἀκέραια διαμίνῃ, καὶ ἐλπίδες ὧσι χρηστὰ περὶ τοῦ ἀπίστου, μένειν τοὺς ἤδη ξενυχθέντας, καὶ μὴ περιττῶν πολέμων ὑποθέσεις εὐγάγειν; οὐδὲ γὰρ περὶ τῶν μηδέπω σινεληθόντων διαλέγεται νῦν, ἀλλὰ περὶ τῶν ἤδη σινεληθόντων. Οὐ γὰρ εἶπεν, Εἴ τις βούλεται λαβεῖν ἄπιστον, ἀλλ', Εἰ τις ἔχει ἄπιστον· οἷον εἴ τις μετὰ τὸ γαμῆσαι ἢ γαμηθῆναι ἐδέξατο τὸν λόγον τῆς ἐνσεβείας, εἴτα θατέρον μέρος ἐπαπέμεινε τῇ ἀπιστίᾳ, καὶ στέργει τὸ σιννοικεῖν, μὴ διαρρήγνυσθω· Ἠγίασται γὰρ, φησὶν, ὁ ἀνὴρ ὁ ἄπιστος ἐν τῇ γυναικί· Τοσαύτη ἡ περιστοιχία τῆς σῆς καθαρότητος. Τί οὖν; ἁγίως ἔστιν ὁ Ἕλλην; Οὐδαμῶς· οὐ γὰρ εἶπεν, Ἁγίως ἔστιν, ἀλλ', Ἠγίασται ἐν τῇ γυναικί. Τοῦτο δὲ εἶπεν, οὐχ ἵνα δείξῃ ἐκείνον ἁγίον, ἀλλ' ἵνα ἐκ περιστοιχίας τὸν φόβον ἐξέλῃ τῆς γυναικὸς κακεῖνον

εἰς ἐπιθυμίαν ἀγάγῃ τῆς ἀληθείας. Οὐ γὰρ τῶν σωμάτων τὸ ἀκάθαρτον, ὧν ἔστιν ἡ κοινωνία, ἀλλὰ τῆς προαιρέσεως καὶ τῶν λογισμῶν. Εἴτα καὶ ἀπόδειξις· εἰ γὰρ ἀκάθαρτος μένουσα γεννᾷς, τὸ δὲ παιδίον οὐκ ἀπὸ σοῦ μόνης, ἀκάθαρτον ἄρα τὸ παιδίον, ἢ ἐξ ἡμισείας καθαρὸν· νυνὶ δὲ οὐκ ἔστιν ἀκάθαρτον. Διὸ καὶ ἐπήγαγεν, Ἐπεὶ τὰ τέκνα ὑμῶν ἀκάθαρτα ἔστι· νυνὶ δὲ ἅγια ἔστι· τουτέστιν οὐκ ἀκάθαρτα. Αὐτὸς δὲ ἅγια ἐκάλεσε, τῇ περιουσίᾳ τῆς λέξεως πάλιν ἐκβάλλων. τῆς τοιαύτης ὑποψίας τὸ δέος. Εἰ δὲ ὁ ἄπιστος χωρίζεται; χωρίζεσθω. Ἐνταῦθα γὰρ οὐκέτι πορνεία τὸ πρᾶγμα ἔστι. Τί δὲ ἔστιν, Εἰ δὲ ὁ ἄπιστος χωρίζεται; Οἶον εἰ κελεύει σοι θύειν καὶ κοινωνεῖν αὐτῷ τῆς ἀσεβείας διὰ τὸν γάμον, ἢ ἀναχωρεῖν, βέλτιον διασπασθῆναι τὸν γάμον, καὶ μὴ τὴν εὐσέβειαν. Διὸ ἐπήγαγεν, Οὐ δεδούλωται ὁ ἀδελφὸς ἢ ἡ ἀδελφὴ ἐν τοῖς τοιούτοις. Εἰ καθ' ἑκάστην ἡμέραν πυκτενοὶ καὶ πολέμους παρέχοι διὰ τοῦτο, φησὶ, βέλτιον ἀπαλλαγῆναι. Τοῦτο γὰρ αἰνίττεται, λέγων· Ἐν δὲ εἰρήνῃ κέκληκεν ἡμᾶς ὁ Θεός. Ἐκεῖνος γὰρ λοιπὸν τὴν αἰτίαν παρέσχεν, ὥσπερ καὶ ὁ πορνεύσας. Τί γὰρ οἶδας, γύναι, εἰ τὸν ἄνδρα σώσεις; Πρὸς τὸ, Μὴ ἀφίετω αὐτὸν, τοῦτο πάλιν. Εἰ γὰρ μὴ στασιάζει, μένε, φησὶν· ἔχει γὰρ καὶ κέρδος· μένε, καὶ παράινει καὶ συμβούλευε καὶ πείθε· οὐδεὶς γὰρ οὕτω διδάσκαλος ἰσχύσαι δυνήσεται, ὥς γυνή. Καὶ οὔτε ἀνάγκην ἐπιτίθησιν αὐτῇ καὶ πάντως ἀπαιτεῖ παρ' αὐτῆς τὸ πρᾶγμα, ἵνα μὴ πάλιν φυρτικώτερον ἐργάσῃται, οὔτε ἀπογινώσκειν κελεύει, ἀλλ' ἀφίησιν αὐτὸ τῇ τοῦ μέλλοντος ἀδηλία μετέωρον, λέγων· Τί γὰρ οἶδας, γύναι, εἰ τὸν ἄνδρα σώσεις; καὶ τί οἶδας, ἄνερ, εἰ τὴν γυναῖκα σώσεις;

Ἐκαστος ἐν τῇ κλήσει ἢ ἐκλήθῃ, ἐν ταύτῃ μενέτω. Γυναῖκα ἔχων ἄπιστον ἐκλήθῃς; μένε ἔχων· μὴ διὰ τὴν πίστιν ἐκβάλῃς τὴν γυναῖκα.

*Hom. xx. on 1 Cor. (ad. vii. 39.)*¹

Ἐπεὶ καὶ δεύτερον συγχωρεῖ γάμον, μόνον Ἐν Κυρίῳ λέγων. Τί δὲ ἔστιν, Ἐν Κυρίῳ; Μετὰ σωφροσύνης, μετὰ κοσμιότητος.

S. AMBROSE.

*Expositio Evangelii secundum Lucam, lib. viii. § 2 (in xvi. 18).*²

Omnis qui dimittit uxorem suam et ducit alteram moechatur: et qui dimissam a viro ducit, moechatur. Prius dicendum arbitror de lege conjugii, ut postea de prohibendo divortio disputemus. Quidam enim putant omne conjugium a Deo esse, maxime quia

¹ Migne's Ed. tom. x. p. 160.

² *Ibid.* tom. i. p. 1765.

scriptum est: *Quae Deus conjunxit, homo non separet*. Ergo si omne conjugium a Deo est, omne conjugium non licet solvi. Et quomodo Apostolus dixit: *Quod si infidelis discedit, discedat*. In quo et mirabiliter noluit apud Christianos causam residere divortii, et ostendit non a Deo omne conjugium; neque enim Christianae gentilibus Dei judicio copulantur: cum Lex prohibeat.

Sed occurrit illud quod ait Salomon: *Domum et substantiam patres partiuntur filiis: a Deo autem praeparabitur viro uxor*. Quod qui in Graeco legit, non putat esse contrarium. Bene enim dixit Graecus ἀρμόζεται; harmonia enim conveniens et apta rerum omnium dicitur commissa connexio. Harmonia est cum fistulae organi per ordinem copulae, legitima tenent gratiam cantilenae, chordarumque aptus servat ordo concordiam. Itaque non habent harmoniam suam nuptiae, quando christiano viro gentilis mulier non legitime copulatur. Ergo ubi nuptiae harmonia: ubi harmonia Deus jungit. Ubi harmonia non est, pugna atque dissensio est; quae non est a Deo, quia *Deus charitas est*.

Expositio Evangelii secundum Lucam, lib. viii. § 8.

Ostendit autem hic locus, quae propter fragilitatem humanam scripta sunt, non a Deo scripta. Unde et Apostolus, *Denuntio*, inquit, *non ego sed Dominus, uxorem a viro non discedere*. Et infra, *Ceteris*, inquit, *ego dico, non Dominus: si quis frater infidelem habet uxorem, et relinquit eam*. Itaque ubi est impar conjugium, lex Dei non est. Et addidit, *Quod si infidelis discedit, discedat*. Simul idem Apostolus negavit legis esse divinae, ut conjugium qualecumque solvatur; nec ipse praecepit, nec dedit deserenti auctoritatem, sed culpam abstulit destituto. Haec moraliter.

De Abraham, lib. i. c. 9.¹

Cum sancto enim sanctus eris et cum perverso perverteris. Si hoc in aliis, quanto magis in conjugio, ubi una caro, et unus spiritus est. Quomodo autem potest congruere charitas, si discrepet fides: Et ideo cave, Christiane, gentili aut Judaeo filiam tuam tradere. Cave, inquam, gentilem aut Judaeam atque alienigenam, hoc est, haeticam, et omnem alienam a fide tua uxorem arcessas tibi. Prima conjugii fides castitatis gratia est. Si idola colat quorum praedicantur adulteria, si Christum neget qui praeceptor et remunerator est pudicitiae, quomodo potest diligere pudicitiam? Si Christiana sit,

¹ Migne's Ed. tom. i. p. 450.

non est satis, nisi ambo initiati sitis sacramento baptismatis. Simul ad orationem nocte vobis surgendum est, et conjunctis precibus obsecrandus Deus. Accedit aliud insigne castimoniae, si credas a Deo tuo tibi quod sortitus es, conjugium datum. Unde et Salomon ait: *A Deo, inquit, praeparabitur viro uxor.* (Prov. xix. 14.) Non possunt hoc dispare fide credere, ut ab eo quem non colit, putet sibi connubii impartitam gratiam. Ratio docet, sed amplius exempla commonent. Saepe illecebra muliebris decipit etiam fortiores maritos, et a religione fecit discedere. Et ideo tu vel amori consule, vel errorem cave. Primum ergo in conjugio religio quaeritur. Ideo Abraham proximam quaesivit dare filio suo.

Quo proficiat hoc considera diligentius. Non licet tibi accipere alienigenam. Sane si Christianam se faciat, laudem habebis ex ea. Ne te quoque, si recusaverit Christiana fieri, studium nuptiarum a fide deflectat, instruit lectio. Abraham sequentem deduci admonuit, residentem non expeti, nec eo filium suum pergere.

*Ep. xix. to Vigilus.*¹

Primum omnium cognosce Ecclesiam Domini tibi commissam; ideoque vitandum semper, ne quid obrepat offensionis, et fiat velut commune corpus ejus gentilium admixtione. Unde Scriptura tibi dicit: Ne accipias uxorem de filiabus Chananaeorum, sed vade in Mesopotamiam, in domum Bathuel, id est domum sapientiae; et ejus tibi acquire copulam. Mesopotamia autem regio est in partibus Orientis, quae duobus maximis per ea locorum Euphrate et Tigri fluminibus circumvenitur, quibus origo est in Armeniae locis. Influunt autem diverso meatu in mare Rubrum; et ideo Mesopotamiae nomine signatur figura Ecclesiae, quae maximis fluentorum prudentiae irriguis atque justitiae fecundat mentes fidelium, quibus sacri baptismatis, cujus typus praecessit in Rubro mari, infundit gratiam, culpamque abluit. Doce ergo plebem, ut non ex alienigenis, sed ex domibus Christianis conjugii quaeratur copula.

Sed prope nihil gravius quam copulari alienigenae, ubi et libidinis et discordiae incentiva, et sacrilegii flagitia conflantur. Nam cum ipsum conjugium velamine sacerdotali, et benedictione sanctificari oporteat; quomodo potest conjugium dici, ubi non est fidei concordia? Cum oratio communis esse debeat, quomodo inter dispare devotione

¹ Migne's Ed. tom. ii. p. 983.

potest esse conjugii communis charitas? Saepe plerique capti amore feminarum fidem suam prodiderunt; ut patrum populus in Beelphegor. Unde Phinees, arrepto gladio, interfecit Hebraeum et Madianiten feminam et mitigavit indignationem divinam, ne totus populus exstingueretur.

Quid de pluribus exemplis loquar? Ex multis unum proferam, et ejus commemoratione liqueat, quam perniciosam sit alienigenae mulieris adscivisse copulam. Quis fortior, et ab incunabilis suis et munitior Dei spiritu, quam Nazaraeus Samson. Et ipse proditus est, et ipse per mulierem non potuit suam tenere gratiam.

Hoc ergo exemplo liquet alienigenarum consortia refugienda; ne pro charitate conjugii proditionis insidiae succedant.

S. JEROME.

*Epistola ad Ageruchiam de Monogamia.*¹

Quodque addidit, *tantum in Domino*, amputat Ethnicorum conjugia, de quibus in alio loco dixerat, *Nolite jugum ducere cum infidelibus.* (2 Cor. vi. 14, *sqq.*) Ne scilicet aremus in bove et asino: ne tunica nuptialis vario sit texta subtegmine.

*Epistola ad Eustochium, De custodia virginitatis.*²

Si autem et illae quae virgines sunt, ob alias tamen culpas, virginitate corporum non salvantur: quid fiet illis, quae prostituerunt membra Christi, et mutaverunt templum Sancti Spiritus in lupanar.

*Adversus Jovinianum, lib. i. 7.*³

Inter caetera Corinthii per litteras quaesierant. . . . Et cum e duobus Ethnicis unus credidisset in Christum, utrumnam credens relinqueret non credentem? Et si essent ducendae uxores, Christianas tantum accipi juberet, an et Ethnicas?

10. (Commenting on vii. 10.)

Docet enim juxta sententiam Domini, uxorem, excepta causa fornicationis, non repudiandam, et repudiatam, vivo marito, alteri non nubere, aut certe viro suo reconciliari debere. His autem quos in matrimonio deprehendisset fides, hoc est, si unus credidisset e duobus, praecipit ne credens repudiet non credentem. Causisque expositis, quod candidatus fidei sit infidelis, si nolit a credente discedere: e contrario jubet, si infidelis repudiet fidelem propter

¹ Migne's Ed. tom. i. p. 1046.

² *Ibid.* p. 397.

³ *Ibid.* tom. ii. pp. 218, 223.

fidem Christi, discedere debere credentem, ne conjugem praeferat Christo, cui etiam anima postponenda est. At nunc pleraeque contemnentes Apostoli jussionem, junguntur gentilibus, et templa Christi idolis prostituunt; nec intelligunt se corporis ejus partem esse, cujus et costae sunt. Ignoscit Apostolus infidelium conjunctioni, quae habentes maritos, in Christum postea crediderunt; non his, quae cum Christianae essent, nupserunt gentilibus, ad quas alibi loquitur. *Nolite jugum ducere cum infidelibus. Quae enim participatio justitiae cum iniquitate? aut quae societas luci ad tenebras? Quae autem conventio Christi ad Belial? aut quae pars fidei cum infidei? Qui autem consensus templo Dei cum idolis? Vos enim estis templum Dei vivi.* Licet enim in me saevituras sciam plurimas matronarum: licet eadem impudentia qua Dominum contempserunt, in me pulicem et Christianorum minimum debacchaturas: tamen dicam quod sentio: loquar quod me Apostolus docuit, non illas justitiae esse, sed iniquitatis; non lucis, sed tenebrarum; non Christi sed Belial; non templa Dei viventis, sed fana et idola mortuorum. Vis apertius discere, quod Christianae omnino non liceat Ethnico nubere. Audi eundem Apostolum, *Mulier*, inquit, *alligata est quanto tempore vir ejus vivit; quod si dormierit vir ejus, liberata est: cui vult nubat, tantum in Domino*, id est, Christiano. Qui secundas tertiasque nuptias concedit in Domino, primas cum Ethnico prohibet.

Commentary on the Epistle to Titus, c. i.¹

Multi superstitiosius magis quam verius, etiam eos qui cum Gentiles fuerint, et unam uxorem habuerint, qua amissa, post baptismum Christi, alteram duxerint, putant in sacerdotio non legendos: cum utique si hoc observandum sit, illi magis ab episcopatu arceri debeant, qui vagam per meretrices ante exercentes libidinem, unam regenerati uxorem acceperint; et multo detestabilius sit fornicatum esse cum pluribus, quam digamum reperiri; quia in alio infelicitas matrimonii est, in alio ad peccandum prona lascivia.

AMBROSIASTER.

(In Ep. 1 Cor. vii. 13).²

Si quis frater uxorem habet infidelem, et haec consentit habitare cum illo, non dimittat illam. Et si qua mulier habet virum infidelem, et hic consentit habitare cum illa, non relinquat virum. Hoc dixit, quia

¹ Migne's Ed. tom. vii. p. 564. ² *Ibid.* S. Ambrose, tom. ii. 2. p. 218.

inter illa primordia, cum ambo utique essent gentiles, fiebat ut unus ex his crederet: et quia horrebant perfidi culturam Dei, similiter et credentes contaminationem praeteriti erroris; ideo praecipit, ut si contenti essent habitare cum immutatis, contenti essent et fideles esse cum illis.

Sanctificatus est enim vir infidelis per uxorem fidem, et sanctificata est mulier infidelis ex viro fidei. Habere illos beneficium bonae voluntatis ostendit; quia honorem nominis Christi non habent: et ad tuitionem hospitii pertinet, in quo signum fit crucis, quo mors victa est; sanctificatio enim est.

Alioquin filii vestri immundi essent. Immundi essent filii eorum, si dimitterent volentes habitare secum, et aliis se copularent; essent enim adulteri, ac per hoc et filii eorum spurii; ideo immundi. *Nunc autem sancti sunt.* Sancti sunt; quia de conjugis licitis nati sunt: et quia sub creatoris veneratione nati sunt propensiore ex parte. Quia sicut quidquid per dedicationem idolorum fit, immundum est; ita quidquid sub Dei creatoris professione fit, sanctum est.

Quod si infidelis discedit, discedat. Propositum religionis, custodit, praecipiendo ne christiani relinquunt conjugia: sed si infidelis odio Dei discedit, fidelis non erit reus dissoluti matrimonii; major enim causa Dei est, quam matrimonii.

Non est enim frater aut soror servituti subjectus in huiusmodi. Hoc est, non debetur reverentia conjugii ei, qui horret auctorem conjugii; non enim ratum est matrimonium, quod sine Dei devotione est: ac per hoc non est peccatum ei, qui dimittitur propter Deum, si alii se junxerit. Contumelia enim Creatoris solvit jus matrimonii circa eum, qui relinquitur, ne accusetur alii copulatus. Infidelis autem discedens, et in Deum et in matrimonium peccare dignoscitur; quia noluit sub Dei devotione habere conjugium. Itaque non est ei fides servanda conjugii, quia ideo recessit ne audiret auctorem esse christianorum Deum conjugii. Nam si Esdras dimitti fecit uxores aut viros infideles; ut propitius fieret Deus, nec iratus esset, si alias ex genere suo acciperent; non enim ita praeceptum his est, ut remissis istis, alias minime ducerent: quanto magis si infidelis discesserit liberum habebit arbitrium, si voluerit nubere legis suae viro? Illud enim non debet imputari matrimonium, quod extra decretum Dei factum est: sed cum post cognoscit et dolet se deliquisse, se emendat, ut veniam mereatur. Si autem ambo crediderint, per cognitionem Dei confirmant conjugium.

In pace autem vocavit nos Deus. Verum est, quia non oportet litigare cum eo, qui discedit; quia odio Dei discedit, ac per hoc nec dignus habendus est.

COUNCIL OF HIPPO (A.D. 393).¹

Canon 12.

Ut gentilibus vel etiam hereticis et schismaticis filii episcoporum vel quorumlibet clericorum matrimonio non conjungantur.

S. AUGUSTINE.

De Sermone Domini in Monte, lib. i. § 44.²

Considerandum est itaque quatenus fornicationem intelligere debeamus, et consulendus, ut coeperamus, Apostolus. Sequitur enim et dicit, *Caeteris autem ego dico non Dominus.* Hic primo videndum est, quibus *caeteris*; dicebat enim superius ex Domini persona iis qui sunt in conjugio, nunc vero ex sua persona caeteris dicit: ergo fortasse iis qui non sunt in conjugio: sed non hoc sequitur. Ita enim subjungit: *Si quis frater habet uxorem infidelem, et haec consentit habitare cum illo, non dimittat illam.* Ergo etiam nunc iis dicit qui sunt in conjugio. Quid sibi ergo vult quod ait, *caeteris*. nisi quia superius eis loquebatur, qui sic copulati erant, ut pariter in fide Christi essent; *caeteris* vero nunc dicit, id est eis qui sic copulati sunt, ut non ambo fideles sint? Sed quid eis dicit? *Si quis frater habet uxorem infidelem, et haec consentit habitare cum illo, non dimittat illam: et si qua mulier habet virum infidelem, et hic consentit habitare cum illa, non dimittat virum.* Si ergo non praecipit ex Domini persona, sed ex sua persona monet, ita est hoc bonum, ut si quis aliter fecerit, non sit praecepti transgressor: sicut de virginibus paulo post dicit, praeceptum Domini se non habere; consilium autem dare; atque ita laudat virginitatem, ut arripiat eam qui voluerit, non tamen ut si non fecerit, contra praeceptum fecisse judicetur. Aliud enim est quod jubetur, aliud quod monetur, aliud quod ignoscitur. Jubetur mulier a viro non discedere; quod si discesserit, manere innuptam aut viro suo reconciliari: aliter ergo non licet facere. Monetur autem vir fidelis, si habet uxorem infidelem consentientem secum habitare, non eam dimittere: licet ergo et dimittere; quia non est praeceptum Domini, ne dimittat, sed consilium Apostoli: sicut monetur virgo non nubere; sed si nupserit,

¹ Mansi, tom. iii. p. 921.

² Migne's Ed. tom. iii. p. 1251.

consilium quidem non tenebit, sed contra praeceptum non faciet. Ignoscitur cum dicitur, *Hoc autem dico secundum veniam, non secundum imperium*. Quapropter, si licet ut dimittatur conjux infidelis, quamvis melius sit non dimittere, et tamen non licet secundum praeceptum Domini ut dimittatur conjux nisi causa fornicationis, fornicatio est etiam ipsa infidelitas.

§ 45. Quid enim tu dicis, Apostole? Certe ut vir fidelis consentientem secum habitare mulierem infidelem non dimittat. Ita, inquit. Cum ergo hoc et Dominus praecipiat, ne dimittat vir uxorem, nisi causa fornicationis, quare hic dicis, *Ego dico, non Dominus?* Quia scilicet idololatria quam sequuntur infideles, et quaelibet noxia superstitio, fornicatio est. Dominus autem permisit causa fornicationis uxorem dimitti: sed quia permisit non jussit, dedit loco Apostolo monendi, ut qui voluerit non dimittat uxorem infidelem, quo sic fortasse possit fieri fidelis. *Sanctificatus est enim, inquit, vir infidelis in uxore; et sanctificata est mulier infidelis in fratre*. Credo, jam provenerat ut nonnullae feminae per viros fideles, et viri per uxores fideles in fidem venirent; et quamvis non dicens nomina, exemplis tamen hortatus est, ad confirmandum consilium suum. Deinde sequitur: *Alioquin filii vestri immundi essent; nunc autem sancti sunt*. Jam enim erant parvuli christiani, qui sive auctore uno ex parentibus, sive utroque consentiente sanctificati erant: quod non fieret, nisi uno credente dissociaretur conjugium, et non toleraretur infidelitas conjugis usque ad opportunitatem credendi. Hoc est ergo consilium ejus, cui credo dictum esse, *Si quid supererogaveris, rediens reddam tibi*.

De Diversis Quaestionibus lxxviii.¹

De conjugio, in eo quod Dominus ait: *Si quis dimiserit uxorem suam, excepta causa fornicationis, etc.*

Si Dominus dimittendae conjugis solam causam fornicationis admittit, et paganum conjugium dimitti non prohibet, consequens est ut paganismus fornicatio deputetur. Solam autem fornicationis causam exceptam facere Dominum, cum de dimittenda conjugē loquitur in Evangelio, manifestum est. Paganum vero conjugium hinc non prohibetur dimitti, quia cum Apostolus de hac re consilium daret, ut fidelis volentem secum esse conjugem infidelem, non dimittat, ait, *Ego dico, non Dominus*: ut Dominus intelligatur, non quidem jubere ut dimittatur, ne contra jussum ejus consilium dare videatur Apo-

¹ Migne's Ed. tom. vi p. 100.

lus, sed tamen permittere; ut nemo in ea re jussionis necessitate teneatur, sed consilii voluntate libere faciat. Verumtamen si quisquam asserat solam illam fornicationem Dominum admittere ad causam relinquendae conjugis, quae vulgo dicitur fornicatio, id est quae concubitu illicito perpetratur: hoc potest dicere, Dominum cum de hac re loqueretur, de utroque fidei dixisse, et marito et uxore, ut si ambo fideles sint, neutri liceat alterum relinquere, nisi causa fornicationis; ubi non potest paganismus intelligi, quia uterque fidelis est. Sic enim et Apostolus videtur distinguere, cum ait: *His autem qui in conjugio sunt praeceptum, non ego, sed Dominus, uxorem a viro non discedere; quod si recesserit, manere innuptam, aut viro suo reconciliari.* Ubi etiam intelligitur quod si una illa causa, qua sola relectio conjugii permittitur, mulier a viro recesserit, innupta perseverare debet: aut si se non continet, viro potius reconciliari vel correcto vel certe tolerando, quam alteri nubere. Sequitur autem, et dicit, *Et vir uxorem non dimittat*: breviter eandem formam intimans in viro, quam praeceperat in femina. Quibus ex praecepto Domini insinuatis ita sequitur: *Caeteris autem ego dico, non Dominus, Si quis frater habet uxorem infidelem, et haec consentit habitare cum illo, non dimittat illam: et mulier si habet virum infidelem, et hic consentit habitare cum illa, non dimittat virum.* Ubi dat intelligi Dominum de his locutum, ut neuter alterum dimitteret, si fideles ambo essent.

Ep. 157, ad Hilarium, c. 31.¹

Ambobus quippe christianis Dominus praecepit ne quisquam dimittat uxorem, excepta causa fornicationis. Ubi autem quaelibet ex eis persona infidelis est, consilium Apostoli attendatur: Ut si infidelis consentit habitare cum viro fidei, vir non dimittat uxorem. Similiter et uxor fidelis virum, si cum illa habitare consenserit. *Quod si infidelis, inquit, discedit, discedat: non est enim servituti subjectus frater aut soror in hujusmodi:* id est, si infidelis noluerit esse cum conjugem fidei, hic agnoscat fidelis suam libertatem, ne ita se subjectum deputet servituti ut ipsam dimittat fidem, ne conjugem amittat infidelem.

De conjugii adulterinis, lib. i.²

Cap. xiii.

Dimittere infideles conjuges non licere sentit Pollentius; licere sed non expedire dicit Augustinus.

Jam nunc illud videamus quod ait Apostolus, *Caeteris autem ego dico, non Dominus:* ad imparia scilicet, hoc est, ubi non ambo

¹ Migne's Ed. tom. ii. p. 689.

² *Ibid.* tom. vi. p. 459.

christiani fuerant, conjugia loquitur. Quod mihi visum est cum monendo discisse. Quia enim conjux fidelis relinquere conjugem licite potuit infidelem, ideo fieri hoc non Dominus, sed Apostolus prohibet. Quod enim Dominus prohibet, fieri omnino non licet. Monet ergo Apostolus, quo possit esse multorum occasio lucratorum, ut fideles conjuges in relinquendis infidelibus permissa licentia non utantur. Tibi autem videtur infideles quoque dimitti a fidelibus non licere, quia hoc vetat Apostolus: cum ego dicam licere, quia hoc non vetat Dominus; non tamen expedire, quia hoc ne fiat, monet Apostolus: qui reddit etiam rationem cur fieri non expediat, quamvis liceat. *Quid enim scis, inquit, mulier, si virum salvam facies? aut unde scis, vir, si uxorem salvam facies?* Cum etiam superius dixisset, *Sanctificatus est enim vir infidelis in uxore, et sanctificata est mulier infidelis in fratre*, hoc est, in christiano: *alioquin filii vestri, inquit, immundi essent; nunc autem sancti sunt.* Sic ad lucrandos conjuges et filios Christo, etiam exemplis quae jam provenerant, videtur hortatus. Cur ergo non expediat etiam infideles conjuges dimitti a fidelibus, causa evidenter expressa est. Non enim propter vinculum cum talibus conjugale servandum sed ut acquirantur in Christum, recedi ab infidelibus conjugibus Apostolus vetat.

Cap. xiv.

Multa non jussa praescripto legis, facienda sunt consilio charitatis.

Cap. xv.

Licita quaedam quae non expediunt.

Porro discedere ab infideli conjuge licet, sed non expedit: manere autem cum illo, si cohabitare consentit, et licet et expedit; quia si non liceret, expedire non posset. Potest ergo aliquid licere et non expedire: expedire autem quod non licet non potest. Ac per hoc non omnia licita expediunt; omnia autem illicita non expediunt.

Cap. xvi.

Licet quod non expedit, differt ab illicito, ita ut illud si fiat, non sit peccatum, quamvis non sit faciendum.

Cap. xvii.

Unde differt id quod licet et non expedit, ab eo quod ideo non expedit quia non licet. Dimittere conjugem infidelem, nec vetat nec jubet Christus, monet Paulus ne fiat.

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Quocirca si dimittere infidelem conjugem non liceret, hoc fieri Dominus prohiberet, neque id Apostolus prohibens diceret, *Ego dico, non Dominus*. Nam si propter fornicationem carnis permittitur homo a conjugē separari; quanto magis in conjugē mentis fornicatio detestanda est? id est infidelitas, de qua scriptum est, *Quoniam ecce qui longe se faciunt a te, peribunt; perdidisti omnem qui fornicatur abs te*.

Cap. xviii.

Cur sicut Israelitis uxores alienigenas, non ita Christianis infideles jubetur deserere. Consilium Pauli tanquam Christi accipiendum. Id quod licet, quandoque expedit, quandoque non. Discessio ab infideli conjugē non prohibita praecepto legis, sed consilio charitatis.

Sed quia ita licitum est, ut non expediat: ne propter conjugum separationes offensi homines, ipsam doctrinam salutis, qua illicita prohibentur, exhorreant, ac sic peiores atque perituri in eadem infidelitate remaneant; intercedit Apostolus, et monendo fieri vetat quod ita licitum est ut non expediat. Sic enim recedere ab infidelibus uxoribus vel maritis, fideles viri vel feminae non prohibentur a Domino, ut neque jubeantur. Nam si dimittere tales conjuges juberentur, nullus esset locus consilio monentis Apostoli ne hoc fieret. Nullo modo enim quod Dominus jubet, servus bonus fieri prohiberet.

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Cum vero coepisset Gentibus Evangelium praedicari, jam conjunctos Gentiles Gentilibus comperit conjuges: ex quibus si non ambo crederent, sed unus aut una infidelis cum fidele consentiret habitare, nec prohiberi a Domino debuit fidelis infidelem dimittere, nec juberi: ideo scilicet non prohiberi, quia justitia permittit a fornicante discedere, et infidelis hominis fornicatio est major in corde; nec vera ejus pudicitia cum conjugē dici potest, quia *Omne quod non est ex fide, peccatum est*: quamvis veram fidelis habeat pudicitiam etiam cum infideli conjugē, qui non habet veram. Ideo autem nec juberi

debuerunt fideles ab infidelibus separari, quia non contra jussionem Domini Gentiles fuerant ambo conjuncti.

Quoniam ergo ab infideli fidelem discedere nec prohibet nec jubet Dominus, ideo ut non discedat, Apostolus dicit, non Dominus: habens utique Spiritum Sanctum, in quo dare posset utile et fidele consilium.

Sicut est, unde jam diu loquimur discessio fidelis conjugis ab infideli, quam non prohibet Dominus praecepto legis, quia coram illo injusta non est; sed prohibet Apostolus consilio charitatis, quia infidelibus affert impedimentum salutis: non solum quia perniciosissime scandalizantur offensi; verum etiam quia in alia conjugia cum ceciderint viventibus eis a quibus dimittuntur, adulterinis nexibus colligati difficillime resolvuntur.¹

Cap. xix.

Consilium non nubendi, de eo esse quod amplius expedit; at consilium non dimittendi infidelem, de eo esse cujus contrarium non expedit.

Ideo hic, ubi id quod licet non expedit, non potest dici, Si dimiserit infidelem, bene facit; si non dimiserit, melius facit: sicut dictum est, *Qui dat nuptum, bene facit; et qui non dat nuptum, melius facit.* Quoniam illud non solum utrumque pariter licet, unde ad nihil horum praecepto Domini quisque compellitur, sed etiam utrumque expedit, aliud minus aliud amplius; unde ad id quod amplius expedit, consilio Apostoli, quicumque potest capere, provocatur. Hoc autem ubi de dimittendo vel non dimittendo infideli conjugio quaeritur, utrumque quidem pariter licitum est per justitiam quae coram Domino est, et ideo nihil horum Dominus prohibet: sed non utrumque expedit, propter infirmitatis hominum, et ideo id quod non expedit, Apostolus prohibet; dante sibi Domino liberum prohibendi locum, quia neque id quod monet Apostolus, prohibet Dominus, neque id quod prohibet Apostolus, jubet Dominus. Quod nisi ita esset, neque contra prohibitionem Domini Apostolus aliquid moneret, neque contra jussionem ejus aliquid prohiberet.

De conjuge infideli dimittendo vel non dimittendo, quoniam unum horum non expedit, aliud expedit, dici non oportet. Qui dimittit, bene facit; et qui non dimittit, melius facit: sed dici oportet, Non

¹ Aliquot MSS., ab infidelitate difficillime resolvuntur.

dimittat, quia, etsi licet, non expedit. Sic ergo possumus dicere melius esse infidelem conjugem non dimittere, quamvis liceat et dimittere; quemadmodum recte dicimus melius esse quod et licet et expedit, quam id quod licet, nec expedit.

Cap. xx.

De conjugibus infidelibus non dimittendis consilium Apostoli est, non praeceptum. Monitum hic loci de re libera esse, alia tamen esse monita Apostoli de re imperata.

His de causis factum est ut exponens Domini sermonem, quem prolixum in monte habuit, ubi ventum est ad quaestionem de conjugibus dimittendis, vel non dimittendis, adhibitis etiam apostolicis testimoniis, dicerem consilium esse Apostoli, non praeceptum Domini, ubi ait, *Caeteris autem ego dico, non Dominus*, monens eos qui haberent conjuges infideles, ut consentientes habitare secum non dimitterent. Quod utique ideo monendum, non jubendum fuit, quia non tanto pondere prohibendi sunt homines facere licita, quamvis non expediant, quanto pondere prohibentur illicita.

Cap. xxi.

De conjugis cum infidelibus. Pollentii sententia discutitur. Aliam esse quaestionem de jam conjunctis, aliam de jungendis. De jam conjunctis, non de jungendis agi in loco Apostoli citato. Illicita et vetita a Domino nunquam expedit facere.

Tu autem cui placet, ita non licere quod non vetat Dominus, sed Apostolus, quemadmodum non licet quod vetat Dominus, cum exponere voluisses quid sibi vellet quod ait, *Ego dico, non Dominus*, cum alloqueretur fideles quibus essent conjuges infideles; dixisti, “Quia Dominus jussit ne conjugia sibimet diversae religionis copularentur”: et ipsum adhibuisti testimonium Domini dicentis, *non accipies uxorem filio tuo a filiabus alienigenarum, ne traducat eum post deos suos, et pereat anima ejus*. Addidisti etiam verba Apostoli, ubi dixit, *Mulier alligata est, quamdiu vir ejus vivit. Quod si mortuus fuerit vir ejus, liberata est: cui vult nubat, tantum in Domino*: quod ita exposuisti, ut adjungeres, “Id est, christiano.” Deinde secutus es, et aisti: “Hoc est ergo Domini praeceptum tam in Veteri quam in Novo Testamento, ut non nisi unius religionis et

fidei conjugia sibi maneant copulata." Si hoc ergo est Domino praeceptum tam in Veteri Testamento quam in novo, et hoc jubet Dominus, hoc docet Apostolus, ut non nisi unius religionis et fidei maneant copulata conjugia; quare contra hoc Domini jussu, contra doctrinam suam, contra praeceptum Testamentum Veteris et novi, jubet Apostolus ut diversae fidei conjugia maneant copulata? "Quia Paulus," inquis, "Gentium praedicator et Apostolus, jam in conjugio positos, non solum monet, sed etiam jubet, ut si unus aut una a conjugibus credidisset, alterum vel alteram non credentem, secum tamen habitare consentientem, non dimitteret." His verbis tuis aliud hoc, aliud esse aliud, satis evidenter ostendis. Illud enim de his conjugii agit, quae sibi primitus copulantur, ne nubet femina non suae religionis viro, vel vir talem ducat uxorem. "Id enim," ut dicis, "jubet Deus, docet Apostolus, utrumque praecipit Testamentum." Hoc autem diversum esse quis abnuat, ubi agit non de jungendis, sed de conjunctis? Ambo quippe unius ejusdemque infidelitatis fuerunt quando conjuncti sunt; sed Evangelium cum venisset, alter sine altera, vel altera sine altero credidit. Si ergo aliud est hoc, quod sine scrupulo ullius dubitationis apparet, cur fidelem cum infideli in conjugio permanere, non et Dominus sicut Apostolus jubet.

Attende ut rem ipsam tanquam in conspectu considerandam planiore sermone ponamus. Ecce conjuges duo, unius infidelitatis; ita fuerunt quando conjuncti sunt: nulla de his quaestio est quae pertineat ad illam Domini jussionem doctrinamque apostolicam et praeceptum Testamenti Veteris et novi, quo prohibetur fidelis cum infideli copulare conjugium. Iam sunt conjuges, et adhuc ambo sunt infideles; adhuc tales sunt quales fuerunt antequam jungerentur, qualesque conjuncti sunt. Venit Evangelii praedicator, credidit eorum aut unus aut una; sed ita ut infidelis cum fidele habitare consentiat. Jubet fidele Dominus ne infidelem dimittat, an non jubet? Si dixeris, Jubet; reclamat Apostolus, *Ego dico, non Dominus*. Si dixeris, non jubet; causam requiro. Neque illam mihi responsurus es, quam tuis litteris indidisti, "Quia Dominus prohibet fideles infidelibus jungi." Hic enim nullo modo est ista causa: de jam junctis loquimur, non de jungendis. Si ergo tu causam non invenisti cur non vetet Dominus quod vetat Apostolus; cernis enim jam, ut existimo, non esse ipsam quam esse putaveras.

Cap. xxv.

Ibi beatior sit mulier sic permanendo, quae mortuo viro suo in potestate habet, cui vult nubere, *tantum in Domino*. Quod duobus modis accipi potest; aut christiana permanens, aut christiano nubens. Non enim tempore revelati Testamenti Novi, in Evangelio vel ullis apostolicis Litteris sine ambiguitate declaratum esse recolo, utrum Dominus prohibuerit fideles infidelibus jungi. Quamvis beatissimus Cyprianus inde non dubitet, nec in levibus peccatis constituat, jungere cum infidelibus vinculum matrimonii, atque id esse dicat prostituere Gentilibus membra Christi. Sed quia de iis qui jam conjuncti sunt alia quaestio est; audiatur et hic Apostolus dicens: *Si quis frater habet uxorem infidelem, et haec consentit habitare cum illo, non dimittat illam: et si qua mulier habet virum infidelem, et hic consentit habitare cum illa, non dimittat virum*. Et sic audiatur, ut quamvis fieri licitum sit, quia hoc non dicit Dominus; non tamen fiat, quia non expedit. Non enim omnia expedire quae licita sunt, apertissime docet Apostolus, sicut supra jam ostendimus. Propter quodlibet tamen fornicationis genus, sive carnis, sive spiritus, ubi et infidelitas intelligitur, et dimisso viro non licet alteri nubere, et dimissa uxore non licet alteram ducere; quoniam Dominus nulla exceptione facta dicit, *Si uxor dimiserit virum suum et alii nupserit, moechatur; et, Omnis qui dimittit uxorem suam, et ducit alteram, moechatur*.

His ita pro meo modulo pertractatis atque discussis, quaestionem tamen de conjugiiis obscurissimam et implicatissimam esse non nescio. Nec audeo profiteri omnes sinus ejus, vel in hoc opere, vel in alio me adhuc explicasse, vel jam posse, si urgear, explicare. Illud autem unde me itidem in alia scheda consulendum existimatis, seorsum etiam ego enodare curarem, si mihi aliud quam tibi visum est, videretur: cum vero eadem sit etiam nostra sententia, non hinc opus est diutius disputare.

Cap. xxviii.

Sed ut sermo noster ad hoc potius claudatur, unde sumpsit exordium, ego non solum alios catechumenos, verum etiam ipsos qui viventium conjugiiis copulati retinent adulterina consortia, cum salvos corpore non admittamus ad Baptismum; tamen si desperati jacuerint, nec pro se respondere potuerint, baptizandos puto, ut etiam hoc

peccatum cum caeteris lavacro regenerationis abluatur. Quis enim novit utrum fortassis adulterinae carnis illecebra usque ad Baptismum statuerant detineri? Si autem ab illa desperatione recreati potuerint vivere, aut facient quod statuerunt, aut edocti obtemperabunt, aut de contemptoribus fiet quod fieri etiam de baptizatis talibus debet. Quae autem Baptismatis, eadem reconciliationis est causa, si forte poenitentem finiendae vitae periculum praecoccupaverit. Nec ipsos enim ex hac vita sine arrha suae pacis exire velle debet mater Ecclesia.

*De Fide et Operibus.*¹

Cap. 2.

Ad hanc autem disputationem videntur impulsus, quod eos moverit non admitti ad Baptismum qui dimissis uxoribus alias duxerint, vel feminas quae dimissis viris aliis nupserint; quia haec non conjugia, sed adulteria esse Dominus Christus sine ulla dubitatione testatur. (Matt. xix. 9.) Cum enim negare non possent esse adulterium, quod Veritas adulterium esse sine ambage confirmat, eisque suffragari vellent ad accipiendum Baptismum, quos hujusmodi laqueo ita captos viderent, ut si non admitterentur ad Baptismum, sine ullo sacramento mallent vivere vel etiam mori, quam disrupto adulterii vinculo liberari: humana quadam miseratione commoti sunt ad eorum causam sic suscipiendam, ut omnes cum eis facinorosos et flagitiosos, etiam nulla prohibitione correptos, nulla instructione correctos, nulla poenitentia mutatos ad Baptismum admittendos esse censerent; existimantes eos nisi fieret, in aeternum esse perituros; si autem fieret, etiam in illis malis perseverantes salvos per ignem futuros.

Cap. 19.²

Cum (beatus Cyprianus) illud non taceat, et ad eosdem mores malos pertinere confirmet, jungere cum infidelibus vinculum matrimonii nihil aliud esse asserens, quam prostituere Gentilibus membra Christi; quae nostris temporibus jam non putantur esse peccata; quoniam revera in novo Testamento nihil inde praeceptum est, et ideo aut licere creditum est, aut velut dubium derelictum.

Quisquis etiam uxorem in adulterio deprehensam dimiserit, et aliam duxerit, non videtur acquandus eis qui excepta causa adulterii dimittunt et ducunt: et in ipsis divinis sententiis ita obscurum est utrum et iste, cui quidem sine dubio adulteram licet dimittere,

¹ Migne's Ed. tom. vi. p. 193.

² *Ibid.* p. 221.

adulter tamen habeatur si alteram duxerit, ut, quantum existimo, venialiter ibi quisque fallatur.

*De Bono Conjugali.*¹

Lib i. cap. 7, 8.

Nec tamen nisi in civitate Dei nostri, in monte sancto ejus, talis est causa cum uxore. Caeterum aliter se habere jura Gentilium, quis ignorat; ubi interposito repudio, sine reatu aliquo ultionis humanae, et illa cui voluerit nubit, et ille quam voluerit ducit? Cui consuetudini simile aliquid, propter Israelitarum duritiam, videtur permisisse Moyses de libello repudii. Qua in re exprobratio quam approbatio divortii magis apparet.

Lib. i. cap. 15.²

Semel autem initum connubium in civitate Dei nostri, ubi etiam ex prima duorum hominum copula quoddam sacramentum nuptiae gerunt nullo modo potest nisi alicujus eorum morte dissolvi.

Lib. i. cap. 24 § 32.³

Bonum igitur nuptiarum per omnes gentes atque omnes homines in causa generandi est, et in fide castitatis: quod autem ad populum Dei pertinet, etiam in sanctitate Sacramenti, per quam nefas est etiam repudio discedentem alteri nubere, dum vir ejus vivit, nec saltem ipsa causa pariendi; quae cum sola sit qua nuptiae fiunt, nec ea re non subsequente propter quam fiunt, solvitur vinculum nuptiale nisi conjugis morte. Quemadmodum si fiat ordinatio cleri ad plebem congregandam, etiamsi plebis congregatio non subsequatur, manet tamen in illis ordinatis Sacramentum ordinationis; et si aliqua culpa quisquam ab officio removeatur, Sacramento Domino semel imposito non carebit, quamvis ad judicium permanente. Generationis itaque causa fieri nuptias, Apostolus ita testis est: *Volo, inquit, juniores nubere.* Et quasi ei diceretur, utquid? continuo subjecit, *filios procreare, matres familias esse.* Ad fidem autem castitatis illud pertinet: *Uxor non habet potestatem corporis sui, sed vir: similiter et vir non habet potestatem corporis sui, sed mulier.* Ad Sacramenti sanctitatem illud: *Uxorem a viro non discedere; quod si discesserit, manere innuptam, aut viro suo reconciliari: et vir uxorem non dimittat.* Haec omnia bona sunt, propter quae nuptiae bonae sunt; proles, fides, Sacramentum.

¹ Migne's Ed. tom. vi. p. 379.

² *Ibid.* p. 385.

³ *Ibid.* p. 394.

De Nuptiis et Concupiscentia, lib. i. cap. 10.¹

Denique mortuo viro cum quo verum connubium fuit, fieri verum connubium potest cum quo prius adulterium fuit. Ita manet inter viventes quiddam conjugale, quod nec separatio, nec cum altero copulatio possit auferre. Manet autem ad noxam criminis, non ad vinculum foederis : sicut apostatae anima velut de conjugio Christi recedens, etiam fide perditam Sacramentum fidei non amittit, quod lavacro regenerationis accepit. Redderetur enim procul dubio redeunti, si amisisset abscedens. Habet autem hoc qui recesserit ad cumulum supplicii, non ad meritum praemii.

Cap. 17.²

In nuptiis tamen bona nuptialia diligantur, proles, fides, sacramentum. Sed proles, non ut nascatur tantum, verum etiam ut renascatur : nascitur namque ad poenam, nisi renascatur ad vitam. Fides autem, non qualem habent inter se etiam infideles relantes carnem. Quis enim vir, quamlibet impius, vult adulteram uxorem ? aut quae mulier, quamlibet impia, vult adulterum virum ? Hoc in connubio bonum naturale est quidem, carnale tamen. Sed membrum Christi conjugis adulterium conjugii debet timere non sibi ; et a Christo operare fidei praemium, quam exhibet conjugii. Sacramentum vero, quod nec separati nec adulterati amittunt, conjuges concorditer casteque custodiant. Solum est enim quod etiam sterile conjugium tenet jure pietatis jam spe fecunditatis amissa propter quam fuerat copulatum.

*Ep. 253 ; to Benenatus.*³

Et quoniam audivi quod de negotio illo transigere cogitas, si verum est (quod miror, si verum est) nosti quemadmodum debeas episcopali paternitate catholicae Ecclesiae providere ; ut non cum quolibet id agas, si tamen, ut dixi, verum est quod audivi, sed potius cum domo catholica, cujus non solum nullum adversitatem, verum etiam fidele adjutorium habere possit Ecclesia.

*Ep. 255 ; to Rusticus.*⁴

Domino dilectissimo, et merito praedicabili ac suspiciendo filio Rustico, Augustinus, in Domino salutem.

Quamvis tibi et universae domui tuae omnia bona optem, nec tantum ad felicitatem praesentis saeculi pertinentia, verum etiam ad

¹ Migne's Ed. tom. x. p. 420.

² *Ibid.* p. 424.

³ *Ibid.* tom. ii. p. 1069.

⁴ *Ibid.* p. 1070.

vitam futuram atque sempiternam, quae tibi nondum credenda persuasa est; tamen quae me moveant, ut de puella quam petis, nihil adhuc audeam polliceri, quantum sufficere visum est, sancto fratri et coepiscopo meo Benenato rescripsi, domine dilectissime et venerabilis filii. Si enim tu, cum certissime noveris, etiamsi nostrae absolutae sit potestatis quamlibet puellam in conjugium tradere, tradi a nobis christianam nisi christiano non posse; nihil tamen mihi tale de filio tuo, quem adhuc paganum audio, promittere voluisti: quanto magis ego, propter illa quae in epistola memorati fratris mei legere poteris, quidquam de illius puellae connubio spondere non debeo, etiamsi quod dixi de filio tuo non tantum promissum tenerem, sed jam etiam factum esse gauderem.

S. INNOCENT I.

*Innocentius universis episcopis in Toletana synodo constitutis, dilectissimis fratribus, in Domino salutem (400 A.D.).*¹

Nec illud debere admitti, quod aliquanti pro defensione pravi erroris opponunt et asserunt, quod ante baptismum uxor accepta non debeat imputari, quia in baptismo omnia dimittuntur; non intelligentes hujusmodi, quod sola in baptismo peccata dimittuntur, nec uxorum numerus aboletur. Nam si *a Deo*, ut scriptum est, *praeparatur viro uxor*, et *quod Deus junxit, homo non separet*; et ipsi auctores generis humani in origine a Domino benedicuntur: quomodo inter peccata, ista creduntur posse dimitti.

Si enim uxor ante baptismum accepta non ducitur in numerum, nec filii ex eadem suscepti inter filios poterunt numerari. Quod quam absurdum sit atque alienum, prudentia vestra melius aestimabit.

*Victricio episcopo Rotomagensi, ep. ii. cap. 26 (A.D. 404).*²

Cap. v.

Ut is qui mulierem (viduam) licet laicus duxerit uxorem sive ante baptismum, sive post baptismum, non admittatur ad clerum; quia eodem videtur vitio exclusus. In baptismo enim crimina dimittuntur, non acceptae uxoris consortium relaxatur.

¹ Migne's Ed. *Patrologia Latina*, tom. xx. p. 493.

² *Ibid.* p. 474.

Cap. vi.

Ne is, qui secundam duxit uxorem, clericus fiat: quia scriptum est *Unius uxoris virum*. Et iterum: *Sacerdotes mei semel nubant*. Et alibi: *Sacerdotes mei non nubent amplius*. Ac ne ab aliquibus existimetur, ante baptismum si forte quis accepit uxorem, et ea de saeculo recedente, alteram duxerit, in baptismo esse dimissum, satis errat a regula, qui in baptismo hoc putat dimitti: remittuntur peccata, non acceptarum uxorum numerus aboletur: cum utique uxor ex legis praecepto ducatur in tantum, ut et in paradiso cum parentes humani generis conjungerentur, ab ipso Domino sint benedicti; et Salomon dicat, *a Deo praeeparabitur viro uxor*. Quam formam etiam sacerdotes omnes servare usus ipse demonstrat Ecclesiae. Satis enim absurdum est aliquem credere, uxorem ante baptismum acceptam, post baptismum non computari; cum benedictio, quae per sacerdotem super nubentes imponitur, non materiam delinquendi dedisse, sed formam tenuisse legis a Deo antiquitus institutae doceatur. Quod si non putatur uxor esse computenda, quae ante baptismum geniti sunt, pro filiis habebuntur.

*Innocentius Rufo, Eusebio, Eustathio, Claudio et cacteris, episcopis Macedonibus et diaconis in Domino salutem (A.D. 414).*¹

Sed obijcitur, quod in baptismo totum quicquid in vetere homine gestum est, sit solutum. Dicite mihi, cum pace vestra loquor: crimina tantum dimittuntur in baptismo, an et illa quae secundum Legis praecepta ac Dei instituta complentur? Uxorem ducere crimen est, aut non est crimen. Si crimen est, ergo praefata venia dixerim; erit auctor in culpa, qui ut crimina committerent, in paradiso, cum ipse ita eos jungerit, benedixit. Si vero non est crimen, quia quod Deus junxit, nefas sit crimen appellari; et Salomon addidit: *Etenim a Deo praeeparatur viro uxor*: quomodo creditur inter crimina esse dimissum, quod Deo auctore legitur consummatum?

Quid de talium filiis percensetur numquid non erunt admittendi in haereditatis consortio, qui ex ea suscepti sunt, quae ante baptismum fuit uxor? eruntque appellandi vel naturales vel spurii; quia non est legitimum matrimonium, nisi illud, ut vobis videtur, quod post baptismum assumitur? Ipse Dominus, cum interrogaretur a Judaeis si liceret dimittere uxorem, atque exponeret fieri non debere,

¹ Migne's Ed. *Pat. Lat.* tom. xx. p. 526.

addidit: *Quod ergo Deus junxit, homo non separet.* Ac ne de his locutus esse credatur, quae post baptismum sortiuntur, meminerint hoc et a Judaeis interrogatum, et Judaeis esse responsum. Quaero, et sollicitus quaero, si una eademque sit uxor ejus qui ante catechumenus, postea sit fidelis, filiosque ex ea, cum esset catechumenus, suscepit, ac postea alios, cum fidelis: utrum sint fratres appellandi, an non habeant postea, defuncto patre herciscundae haereditatis consortium, quibus filiorum nomen creditur abstulisse regeneratio spiritalis? Quod cum ita sentire atque judicare absurdum est, quae (malum) ratio est hoc defendi, et vacua opinione magis jactari, quam aliqua auctoritate roborari, cum non possit inter peccata deputari, quod Lex praecepit, et Deus junxit?

THEODORET.

In 1 Cor. vii. 13, 14.¹

Οὐκ ἄπιστον γυναῖκα νομοθετεῖ λαμβάνειν, οὐδὲ ἀπίστῳ ἀνδρὶ πιστὴν γυναῖκα κελεύει συνάπτεσθαι· πᾶν γὰρ τοῦναντίον διαγορεύει. Μετὰ βραχεία γὰρ ταῖς χήραις νομοθετῶν ἐπήγαγε, μόνον ἐν κυρίῳ, τουτέστι πιστῷ, ἐνσεβεῖ, σωφρόνως, κοσμίως. Ἐνταῦθα δὲ περὶ τῶν πρὸ τοῦ κηρύγματος συναφθέντων ἔφη. Συνέβαινε γὰρ τὸν μὲν ἄνδρα πιστεῦσαι, τὴν δὲ γυναῖκα τῇ ἀπιστίᾳ προσμείναι, καὶ αὖ πάλιν, τὴν μὲν γυναῖκα τὸ κήρυγμα δέξασθαι, τὸν δὲ ἄνδρα τῆς ἀπιστίας περικεῖσθαι τὴν λύμην. Καὶ παρεγγυᾷ τοῖς ὑγιαίνουσι φέρειν τὴν τῶν ὁμοζύγων ἀσθένειαν καὶ τὴν τούτων πραγματεύεσθαι σωτηρίαν. Τοῦτο γὰρ λέγει· Ἠγίασται γὰρ ὁ ἀνὴρ ὁ ἄπιστος ἐν τῇ γυναικὶ καὶ ἡγίασται ἡ γυνὴ ἡ ἄπιστος ἐν τῷ ἀνδρὶ· τουτεστὶν ἔχει σωτηρίας ἐλπίδα. Εἰ δὲ καὶ αὐτὸς ἢ αὐτὴ ἐπιμένει τῇ νόσῳ, τὸ ἐκείνου σπέρμα μεθέξει τῆς σωτηρίας. Ὑπερβολικώτερον δὲ ταῦτα τέθεικε, πείθων μὴ καταλιπεῖν τὴν συνάφειαν.

Εἰ δὲ ὁ ἄπιστος χωρίζεται, χωρίζεσθω· ὃν δεδούλωται ὁ ἀδελφὸς ἢ ἡ ἀδελφὴ ἐν τοῖς τοιούτοις. Τὸ πιστεῦον, φησὶ, μέρος μὴ διδότη πρόφασιν τῷ χωρισμῷ. Εἰ δὲ τὸ νοσοῦν ἀποστῆναι βούλεται, ἀθῶος εἰ σὺ, καὶ τῆς κατηγορίας ἐλεύθερος. Ἐν δὲ εἰρήνῃ κέκληκεν ἡμᾶς ὁ Θεός. Καὶ μὴν ὁ κυρίως ἔφη· Οὐκ ἤλθον βαλεῖν εἰρήνην ἐπὶ τὴν γῆν, ἀλλὰ μάχαιραν, διχᾶσαι ἄνθρωπον ἀπὸ τοῦ πλησίον αὐτοῦ. Ἄλλ' οὐκ ἐναντίον τοῦτο ἐκείνῳ. Ἑρμενεύει δὲ ὁ Ἀπόστολος τὴν τῶν κυρίου διδασκαλίαν. Τὸ σωτήριον γὰρ, φησὶ, κήρυγμα οὐ σύγχυσιν εἰς τὸν βίον εἰσάγει, ἀλλὰ μᾶλλον πραγματεύεται τὴν ἀληθὴ καὶ θεοφιλεῖν εἰρήνην.

¹ Migne's Ed. tom. iii. p. 277.

In vv. 16, 17.

Ἐδίδαξεν ἐνταῦθα σαφῶς, ὥς οὐκ ἀπίστοις ἀνδράσιν ἢ γυναιξὶ συνάπτεσθαι παρηγγύησεν, ἀλλὰ τοῖς οὕτω κληθεῖσιν ἐκεῖνα νενομοθέτηκεν.

In v. 39.¹

Γυνὴ δέδεται νόμῳ ἐφ' ὅσον χρόνον ζῇ ὁ ἀνὴρ αὐτῆς· ἐὰν δὲ κοιμηθῇ ὁ ἀνὴρ, ἐλευθέρα ἐστὶν ᾧ θέλει γαμηθῆναι, μόνον ἐν κυρίῳ. Τοῦτέστιν ὁμοπίστῳ, εὐσεβεῖ, σωφρόνῳ, ἐννόμῳ.

COUNCIL OF CHALCEDON (A.D. 451.)²

Canon 14.

Ἐπειδὴ ἔν τισιν ἐπαρχίαις συγκεχώρηται τοῖς ἀναγνώσταις καὶ ψάλλταις γαμεῖν, ὥρισεν ἡ ἀγία Σύνοδος μὴ ἐξεῖναι τινα αὐτῶν ἑτερόδοξον γυναικα λαμβάνειν· τοὺς δὲ ἤδη ἐκ τοιούτου γάμον παιδοποιήσαντας, εἰ μὲν ἔφθασαν βαπτίσαι τὰ ἐξ αὐτῶν τεχθέντα παρὰ τοῖς αἵρετικοῖς προσάγειν αὐτὰ τῇ κοινωνίᾳ τῆς καθολικῆς Ἐκκλησίας· μὴ βαπτισθέντα δὲ, μὴ δύνασθαι ἔτι βαπτίζειν αὐτὰ παρὰ τοῖς αἵρετικοῖς· μήτε μὴν συνάπτειν πρὸς γάμον αἵρετικῷ ἢ Ἰουδαίῳ ἢ Ἑλληνι, εἰ μὴ ἄρα ἐπαγγέλλοιτο μετατίθεσθαι εἰς τὴν ὀρθόδοξον πίστιν τὸ συναπτόμενον πρόσωπον τῷ ὀρθοδόξῳ. Εἰ δέ τις τοῦτον τὸν ὅρον παραβαίῃ τῆς ἀγίας Συνόδου, κανονικῶς ὑποκείσθω.

In the period of Christian history which extends from the conversion of Constantine to the death of Justinian certain features which were present in the earlier period do not fail to become emphasized. Thus the practice of marriage between Christian women and heathen husbands, though it can never be said to be approved, becomes so common as to create a tradition which weighs to some extent with S. Augustine. The numerical superiority of the women in the Christian community does not appear to have ceased with the influx of the world into the Church, while the laxer spirit of the new converts would certainly not be prepared to admit any greater stringency of obligation than it had been found possible to maintain in the earlier period.

Intro-
ductory
Statement.
Mixed
Marriages.

In the matter of married converts, on the other hand, this second period shews a considerably more rigorous discipline

¹ Migne's Ed. tom. iii. p. 285.

² Mansi, tom. vii. p. 363.

Re-
marriage
of
Converts.

than can be found in the earlier centuries. The explanation is almost certainly to be found chiefly in the existence of the careless unbaptized catechumens, who were too apt to claim the license of the heathen while professing the faith of the Christian. Such catechumens were made to accept the Christian law, which thus came to be extended indefinitely outside the ranks of the baptized. It is true that most Christian writers still seem to have admitted the rightfulness of the remarriage of converts under given conditions, but the opposite tendency asserted itself so powerfully that S. Augustine is found to disallow such remarriage.

Instances.

Actual instances of mixed marriages may first be noticed.

Nonna.

Nonna (died A.D. 374), the mother of S. Gregory Nazianzen, was the child of Christian parents in good position, Philtatus and Gorgonia. She was married to the elder Gregory of Nazianzum, who at the time of his marriage was an adherent of the Hypsistarian sect. This body professed a strange medley of Christianity, Judaism, and Paganism; and Professor Stokes describes it as "one of the precursors of Mahometanism which appeared from time to time in the East."¹ It is not to be regarded as worthy of the name of a Christian sect, and Gregory, while a Hypsistarian, was, in the view of the Church, a non-Christian. By Nonna's influence, according to the testimony of S. Gregory the younger, the elder Gregory was converted and baptized.²

S.
Monnica.

S. Monnica (A.D. 331-408), the mother of S. Augustine, was married to Patricius, an unbaptized man of passionate character and somewhat irregular life. S. Monnica was of Christian parentage. Her home was "*domus fidelis, bonum membrum Ecclesiae*."³ Patricius was apparently a careless adherent of the Christian faith, content to rest, like so many in his age, on the outside fringe of the Church. He was baptized a short time before his death in A.D. 371. For some twenty years, therefore, S. Monnica's marriage had been a marriage with one who was not a *fidelis*.

¹ Art. *Hypsistarii*, in *Dictionary of Christian Biography*.

² S. Greg. Nazianzen, *Oration* 18, c. 11 (Migne's Ed. tom. i. p. 997).

³ S. Augustine, *Confessions*, ix. 8.

Laeta, who was daughter-in-law of Paula (died A.D. 404), the friend of S. Jerome, is described as the daughter of Albinus, a heathen priest, and of a Christian mother. Whether the mother was a Christian before her marriage does not appear.¹

The
Mother of
Laeta.

Synesius, the neo-platonist philosopher, and afterwards Bishop of Ptolemais in the Libyan Pentapolis, married a Christian lady at Alexandria in the year 403, at which time he was not himself baptized, though gradually becoming more and more Christian in thought and feeling. This marriage is very remarkable, since it was deliberately solemnized by Theophilus, the Christian patriarch of Alexandria. When, some time after his baptism, Synesius was elected, much against his will, to be Bishop of Ptolemais, he used, among other arguments against his acceptance of the office, the argument that he was not prepared to live a celibate life, as appears to have been generally expected of a bishop. "God and the law and the sacred hand of Theophilus gave me my wife. I therefore declare openly to all, and testify that I will not separate entirely from her, or visit her secretly like an adulterer. The one course would be contrary to piety, the other to law. I shall wish and pray to have a large number of virtuous children."² It appears, therefore, to be established that in the case of Synesius the marriage was actually solemnized, notwithstanding the fact that he was not a Christian, by the Christian patriarch of Alexandria himself.

Synesius.

The attitude of the secular law on the subject of marriage between Christians and non-Christians may be noticed. There is at no time during the period from Constantine to Justinian any secular prohibition of marriage between Christians and Pagans. As Roman citizens they were equally protected by the Roman law. Other feelings were, however, current with regard to (a) Jews and (b) barbarians.

Secular
Legisla-
tion.

Jews were then, as so often in later times, regarded as generally noxious. Politically they had no loyalty, even when they were free from sedition; while from the religious point of view they were offensive alike to *gentiles* and to Christians. Accordingly we find that Constantius II., in A.D. 339, forbade

Marriage
between
Christians
and Jews.

¹ S. Jerome, *Epistle* 107.

² Synesius, *Ep.* 105.

all marriages between Christians and Jews under penalty of death.¹ About fifty years later, in the year 388, Emperors Valentinian II., Theodosius the Great, and Arcadius, pronounced that in cases of marriage between a Jew and a Christian, the parties to the marriage were to be accounted guilty as of the crime of adultery, and the right of accusation was made public.² This enactment passed into the Code of Justinian, thence into the Basilicas, and finally into the Nomocanones, where it formed part of the recognised law of the Church as well as of the State.³

And
between
Romans
and
barbarians.

The laws affecting marriage with barbarians can hardly be said to have any religious significance. There was no secular bar to marriage between two persons who were Romans, even though one was a Christian and the other a Pagan; but a constitution of the Emperors Valentinian I. and Valens, issued in A.D. 365, made marriage between Romans and barbarians a capital offence.⁴ The ground was civil, not religious, incompatibility.

Christian
authorities.
Council of
Arles.

Among distinctly Christian authorities for the period may first be mentioned the Council of Arles (A.D. 314), which has a significant canon on the subject of mixed marriages. "Concerning baptized (*fidelibus*) damsels who are united to *gentiles*, it was determined that for some time they should be excluded from communion."⁵ Evidently no iteration of the teaching that mixed unions were wrong had availed to prevent their occasional occurrence. The question accordingly arose, When such a marriage has taken place, what is the Church to do? Is the marriage to be considered as in all respects null, and the erring Christian woman to be treated as an alien till she renounces her marriage, or is she to be simply punished for disobedience, and then allowed to continue the relation? This question is still beyond all doubt one of the most difficult questions on the subject of marriage with which the Church is confronted. The Council of Arles took the more indulgent view. The continuance of the marriage relation does not

¹ *Codex Theodosianus*, xvi. 8. 6.

² *Ibid.* iii. 7. 2.

³ Zhishman, *Das Eherecht der Orientalischen Kirche*, p. 510.

⁴ *Codex Theodosianus*, iii. 14. 1.

⁵ Mansi, tom. ii. p. 472.

appear to have been forbidden; but the Christian woman was excluded from communion for a time.

The Council of Laodicea may next be noticed.¹ This Council must be placed after the Council of Antioch in A.D. 341, but before the second General Council in A.D. 381. It has been suggested that the Council of Laodicea may have been "a semi-Arian council, like that of Antioch, whose canons were received ultimately by the Church for their intrinsic worth."² Dionysius Exiguus, through whom our knowledge of the canons of this Council comes, appears only to have preserved an abstract of the contents of each canon, and not the actual canons themselves. The 10th and 31st canons both forbid the marriage of Catholic Christians with heretics, except in the case of the heretic promising to become a "Christian." It is not said whether the conversion and baptism would in this case be required to antedate the marriage or not.

The African Code³ forbids the sons of clergy to marry *gentiles* or heretics, a prohibition which suggests the inference that it was not practicable to restrain such unions among the laity.

The 9th Canon of S. Basil⁴ thus adduces the instructions of S. Paul as regards female converts: "Even from an unbelieving husband the woman was not commanded to depart, but to remain by reason of the uncertainty of the issue. 'For what knowest thou, O wife, if thou shalt save thy husband?'" To S. Basil, therefore, the possibility of the conversion of the husband supplied the ground for the continuance of an union which was under unequal conditions, and required explanation.

S. Chrysostom has much to say upon the subject. In the Homily *Against those who fast with the Jews*⁵ he compares the permission to retain a non-Christian wife with the permission to cast out a wife guilty of unchastity, drawing the inference

¹ Mansi, tom. ii. p. 564.

² Ffoulkes, in the *Dictionary of Christian Antiquities*; art. *Laodicea, Councils of*.

³ Mansi, tom. iii. p. 722.

⁴ S. Basil, *Epistle* 188 (Migne's Ed. tom. iv. p. 677).

⁵ S. Chrysostom, *Against those who fast with the Jews*. (Migne's Ed. tom. i. p. 860.)

with an
unbeliever
is the great
concession.

that God is loving and careful of His people, who thus suffers unfaithfulness to Himself but permits man to punish unfaithfulness which regards man.

The same thought is prominent in his mind in his remarks on the passage 1 Cor. vii. 12, 13 in the 19th Homily on that Epistle.¹ The permission to retain the wife is, in S. Chrysostom's mind, the overwhelming concession. He adduces the parable of the unmerciful servant, to whom the lord was willing to forgive ten thousand talents owing to himself. The difficulty to S. Chrysostom thus lay not at all in the putting away of the unbelieving partner who was averse to the marriage, but in the retaining of the unbelieving partner who was willing to be retained. He goes on to notice S. Paul's statement that the unbelieving partner is sanctified by the believer, which is made, he says, lest the woman should fear that she would be defiled by the connexion. Stress is laid upon the possibility of the conversion of the unbelieving partner. "For how will a wife who has held in dishonour the time gone by, and is become the wife of another, and has blotted out the equities of marriage, be able to recall her injured spouse?"

Separation
permissible
if the
unbeliever
be the
cause of it.

Re-
marriage
also per-
missible.

Yet "she does not abide with the unbeliever in any case, but only if he be willing." "If the unbeliever be the cause of separation, let him be the cause of separation.' For in that case the deed (*πρᾶγμα*) is no longer fornication (*πορνεία*)." This sentence can hardly mean anything except that the Christian partner may remarry. There could be no *πορνεία* in any case without a fresh connexion. "But what does that mean, 'If the unbeliever be the cause of separation (*εἰ δὲ ὁ ἄπιστος χωρίζεται*)'? For instance, if he command thee to sacrifice, and to communicate with him in impiety by reason of the marriage, or (if he command thee) to retire, it is better that the marriage, rather than that piety, should be torn asunder. Wherefore he added, 'A brother or a sister is not bound in such a case.' If every day he spars and contends on this account, (the Apostle) says it is better to be set free (*ἀπαλλοτρίωναι* = to be divorced). For this it is which he

¹ S. Chrysostom, *Homily xix. on 1 Corinthians*, in loco. (Migne's Ed. tom. x. p. 154.)

indicates when he says, 'But God has called us in peace.' For the husband has now provided a ground, just as he who has committed fornication."

Attention has already been called to the meaning which such a master of Greek as S. Chrysostom attaches to the verb *χωρίζομαι*. It is not merely, "If he depart, let him depart," *χωρίζομαι*, as in the English and Latin versions, but, "If he be the cause of separation, let him be the cause of separation."

S. Chrysostom thus holds that if the unbeliever be the cause of separation (not necessarily himself being the *deserting* party), the separation is justified so far as concerns the Christian partner, and he uses language which implies that the Christian partner may remarry. On the other hand, he is of opinion that when the Christian partner of his own motion repudiates a marriage which the unbelieving partner is willing to continue, he is guilty of "blotting out the equities of marriage."

S. Ambrose (bp. A.D. 374-397) has some very distinct S.
Ambrose. utterances on the questions before us. Commenting on S. Luke xvi. 18, he says, "And how said the Apostle, 'But if the unbeliever depart, let him depart'? In which (saying) he in wondrous wise both expressed his will that among Christians there should abide no cause of divorce, and showed that not every marriage is from God, for Christian women are not united to *gentiles* with the approval of God, since the law prohibits it."¹

Farther on in the same commentary he again contrasts the prohibition of divorce to Christians with the permission granted by S. Paul where one of the partners is an unbeliever.² He quotes loosely, as if from memory, reading in the 12th verse *et relinquit eam* for *non dimittat eam*. But the inference he proceeds to draw is equally warranted by the permission to separate which is given in the 15th verse. "Wherefore," says S. Ambrose, "where marriage is unequal, there the law of God is not. And he added, 'But if the unbeliever depart, let him depart.' At the same time the same Apostle denied that it was

¹ S. Ambrose, *Expositio Evangelii secundum Lucam*, lib. viii. sec. 2 (in xvi. 18). (Migne's Ed. tom. i. p. 1765.)

² *Ibid.* lib. viii. § 8.

of the law Divine that any marriage whatsoever should be dissolved; neither did he himself enjoin it, nor give authority to the deserting partner, but he took away all blame from the partner deserted."

S. Ambrose thus grasps with all clearness the distinction between Christian marriage and marriage which is not Christian. The latter is not, strictly speaking, a marriage according to the law of GOD, and therefore does not properly come under the Divine prohibition of divorce. Yet S. Paul had abstained from severing the tie.

Though S. Ambrose evidently follows S. Paul in the permission to continue such marriages, he is notwithstanding very clear as to the wrongfulness of any attempt by one already a Christian to contract a marriage with one outside Christianity. Thus in the treatise *De Abraham*¹ he solemnly warns Christians against such marriages, and expressly states that the fact that the person sought is a catechumen does not justify union with the unbaptized. "If she be a Christian, it is not enough unless ye both have been initiated by the sacrament of baptism." In the epistle to Vigilius² S. Ambrose is also very decided in his opposition to mixed marriages, taking the ground that all such marriages are dangerous to the faith of the believing partner.

S. Jerome. S. Jerome is no less clear as to the wrongfulness of mixed marriages. In his letter to Ageruchia, a young widow lady, he dissuades her *more suo* from marriage a second time. In the course of his argument he remarks: "And that which he added, 'only in the Lord,' takes away marriages with the ethnics, of which he had said in another place, 'Be not yoked with unbelievers,' lest, in truth, we plough with an ox and an ass; lest the nuptial tunic be woven with a mottled woof."³

Letter to Eustochium. Writing to Eustochium, a young unmarried lady, and the daughter of Paula, another of those epistles which, as

¹ S. Ambrose, *De Abraham*, lib. i. c. 9. (Migne's Ed. tom. i. p. 450.)

² S. Ambrose, *Epistle xix. to Vigilius*. (Migne's Ed. tom. ii. p. 983.)

³ S. Jerome, *Epistola ad Ageruchiam de Monogamia*. (Migne's Ed. tom. i. p. 1046.)

addressed to ladies, readers of the present day find it so difficult to appreciate, he is equally clear on the influence of mixed marriages. "But if they also who are virgins by reason of other faults may not be saved by reason of the virginity of their bodies; what shall be done to those who have prostituted the members of Christ, and have changed the temples of the Holy Ghost into a brothel?"¹

In his first book against Jovinian S. Jerome treats of the case of the married convert. Referring to S. Paul's teaching in 1 Cor. vii. he states that the occasion of it was that "among other things the Corinthians had enquired by a letter whether, when of two (married) ethnics one had believed in Christ, the believing partner ought to leave the unbeliever. And, if wives were to be taken in marriage, whether he commanded that only Christian women should be received, or ethnics also."² S. Jerome's comment on S. Paul's answer at once gives a very clear statement of his own views, and affords considerable insight into the actual laxity of practice in his day in the matters of mixed marriages. "But to those whom the faith had overtaken in the married state, that is, if one of two had believed, he enjoined that the believer should not repudiate the unbeliever. He declares as the reasons (for this advice) that the unbeliever, if he be unwilling to depart from the believer, is a candidate for the faith: on the other hand he commands that if the unbeliever repudiate the believer on account of the faith of Christ, the believer ought to depart, lest he should prefer his partner to Christ, who ought to be preferred even to his own life. But now very many women, despising the commandment of the Apostle, are united to *gentiles*, and prostitute the temples of Christ to idols, nor do they understand that they are a part of his body, whose ribs indeed they are. The Apostle pardons union with unbelievers to those wives who, having husbands, believed in Christ at a date subsequent to their marriage: but he does not pardon those who, when they

Against
Jovinian.

¹ S. Jerome, *Epistola ad Eustochium, De custodia virginitatis*. (Migne's Ed. tom. i. p. 397.)

² S. Jerome, *Adversus Jovinianum*, lib. i. c. 7. (Migne's Ed. tom. ii. pp. 218, 223.)

were Christians, married *gentiles*, to whom he says elsewhere, 'Be not yoked with unbelievers,' &c. . . . For although I know that very many of the matrons will be furious against me; although with the same immodesty with which they have despised the Lord they will riot against me, who am but a flea and the least of Christians; yet I will say what I feel."

Prevalence
of mixed
marriages,

The statement as to the prevalence of mixed marriages in the Roman Church in S. Jerome's time, or about the end of the fourth century, is remarkable. "Very many matrons" would be affected by his statement. There is still no indication of any mixed marriages in which the husband was a Christian and the wife a non-Christian. Evidently the women were still in the majority among the Christians, and the old difficulty with which Callistus had to deal more than two hundred years before was still as real a difficulty as ever. But practice had thrown over the old restrictions. Ladies of position would no longer think of confining their choice to the two alternatives of remaining unmarried or marrying beneath them; they married non-Christian husbands of their own rank.

which S.
Jerome
denounces
as
altogether
unlawful.

S. Jerome declines to be led away by the depraved practice around him. He returns to the strict teaching of S. Cyprian. Women who thus unite themselves with *gentiles*, "despise the commandment of the Apostle," and "prostitute the temple of Christ to idols." The case of the married convert is, however, different. If the unbeliever will abide, the existing union is permitted and preferred; otherwise divorce is open. S. Jerome appears to understand that such divorce carries with it the right of remarriage, as he sharply contrasts it with the ordinary indissolubility of Christian marriage. After stating that in Christian marriage the wife is not to be put away except for fornication, and, if put away, is not to marry again while her husband lives, he proceeds at once to state the case of the unbelieving partner, introducing his statement with *autem* (*notwithstanding, however*).

Case of the
married
convert.
Divorce
open,

and
probably
also re-
marriage.

Marriage
before
baptism no
bar to the
priesthood.

A passage in the Commentary on the Epistle to Titus expresses S. Jerome's sense of the wrongfulness of the view that a marriage before baptism should be counted as one of the two successive marriages which would disqualify a man for the

priesthood. Unions before baptism S. Jerome would regard as in an altogether different plane from unions after baptism.¹ This subject will be reverted to in connexion with S. Innocent's letters.²

The writer known as Ambrosiaster has a passage on the subject. It is remarkable for its very strong statement as to the freedom of the believer to marry again in the case where the unbeliever has effected a separation. "For if Esdras caused to be put away unbelieving wives or husbands in order that God might be propitiated and not angered through their taking others of their own race; for it was not commanded to them that when the former were put away they were not to marry others; how much more, if the unbeliever have departed, shall the other partner have free choice if she desire to marry a husband of her own law? For that ought not to be called matrimony which is effected outside the decree of God; but when afterwards a person recognises this, and is grieved to have been in default, (the marriage) amends its character, so that he may be deserving of pardon. But if both believed they confirm their marriage by the approbation of God."³

The testimony of Ambrosiaster will be received with some measure of suspicion on account of the very lax character of his other teaching on the subject of divorce among Christians; but it should be remembered that here he is not only entirely in accord with the most approved practice of the later Church, but the grounds he gives for his conclusions are exactly the grounds which have commended themselves to many high authorities of later times.

The Council of Hippo, in A.D. 393, following the precedent of the Canon of Carthage, which has been already cited from the African code, ruled "that the sons of bishops, or of whatsoever clergy, are not to be united in marriage to *gentiles*, or even to heretics and schismatics."⁴ From this may be gathered, what indeed S. Augustine explicitly states, that there was no

Ambrosi-
aster.

Council of
Hippo.

¹ S. Jerome, *Commentary on the Epistle to Titus*, c. 1. (Migne's Ed. tom. vii. p. 564.)

² p. 516.

³ Ambrosiaster, in *Epist. 1 Cor.* vii. 13. (Migne's Ed. of S. Ambrose, tom. ii. 2. p. 218.)

⁴ Mansi, tom. iii. p. 921.

very strong feeling at this time in Africa against such marriages in the cases of ordinary lay Christians.

S.
Augustine.
De
Sermone
Domini in
Monte.

Dismissal
of
unbeliever
per-
missible.

We next come to S. Augustine. In the *Exposition of the Sermon on the Mount*, written about A.D. 394, and while therefore he was a priest at Hippo, he passes from our Lord's teaching on marriage and divorce to the teaching of S. Paul on these subjects in 1 Cor. vii. After considering S. Paul's injunctions in restraint of divorce in the case of ordinary Christian marriage, he proceeds to consider the Apostle's teaching as regards the case of the married convert. In so doing he lays considerable stress on the tone in which S. Paul says, "To the rest say I, not the Lord." "If therefore he does not command in the person of the Lord, but counsels in his own person, there is this advantage that if any should do otherwise he is not the transgressor of a command."¹ Keble remarks that S. Augustine here overlooks "the positive declaration of the Apostle that in his own counsels, as well as in what he quoted from the Lord, he 'had the Spirit of God.'"² That this criticism is uncalled for may be seen from the fact that in the *De Conjugiis Adulterinis*, where the same arguments are retraced with more insistence and at greater length, S. Augustine expresses himself thus: "Since therefore the Lord neither prohibits nor commands the believer to depart from the unbeliever, so it is the Apostle, not the Lord, who says that he should not depart; having undoubtedly the Holy Spirit, in which he was able to give useful and faithful counsel."³ S. Augustine then does certainly not lose sight of the fact that S. Paul had the Spirit of God. And it may surely be asserted, without leaving much scope for argument, that while it would contradict Holy Scripture to say that S. Paul, in the passage under notice, was teaching without the Spirit of God, the Apostle himself does distinctly indicate an essential difference of character in the heads of his teaching. That difference,

¹ S. Augustine, *De Sermone Domini in Monte*, lib. i. § 44. (Migne's Ed. tom. iii. p. 1251.)

² Keble, *Sequel of the Argument against immediately repealing the Laws which treat the Nuptial Bond as indissoluble*, p. 97.

³ S. Augustine, *De Conjugiis Adulterinis*, lib. i. c. 18. (Migne's Ed. tom. vi. p. 463.)

according to S. Augustine, is the difference between command and counsel. In Christian marriage "the woman is *commanded* not to depart from her husband, but if she depart to remain unmarried, or to be reconciled to her husband: it is not therefore lawful to do otherwise. But the believing husband is *counselled*, if he have an unbelieving wife who consents to dwell with him, not to put her away: therefore it is lawful to put her away."¹ The antithesis here would seem to demand that the putting away an unbelieving partner would carry with it the power to marry again; but elsewhere S. Augustine expresses himself in a different sense. Apart from the right of remarriage S. Augustine is clear that the Christian partner has a right of separation even in the case where the unbeliever is willing to abide. Opinions may differ as to the value of this conclusion, and of the argument upon which it is based. There can, however, be no uncertainty as to S. Augustine's view. "The believing man, if he have an unbelieving wife who agrees to live with him, is counselled not to dismiss her: *it is therefore permissible to dismiss her*: because it is not a precept of the Lord that he do not dismiss her, but a counsel of the Apostle; just as a virgin is advised not to marry; yet if she marry she will not indeed observe the counsel, but she will also not be acting in violation of a precept."

Because
the con-
tinuance
of the
marriage is
counselled
only, not
com-
manded.

The distinction between the sacramental character of Christian marriage and the non-sacramental character of marriage outside Christianity, which S. Augustine afterwards taught in the *De Bono Conjugali*, does not appear to have been present to his mind when writing the commentary on the Sermon on the Mount. At least he nowhere bases upon it. On the contrary, he goes on to use an argument which altogether ignores this difference of character. "If it be permissible that an unbelieving wife be dismissed, although it is better not to dismiss her, and yet it is not permitted according to the precept of the Lord that a wife should be dismissed except for the cause of fornication, then this very unbelief is also fornication."

Unbelief a
spiritual
fornication.

¹ S. Augustine, *De Sermonibus Domini in Monte*, lib. i. § 44.

*De Diversis
Quaestioni-
bus, lxxxiii.*

Alike in the early and in the later years of S. Augustine's teaching this argument, that an unbelieving wife might be dismissed because unbelief was a spiritual fornication, appears to have been a very favourite one with him. In the book *De Diversis Quaestionibus lxxxiii.*, which were answers written in the early years, though repeated at a later date, he repeats the argument. "If the Lord admits no other ground but fornication for the dismissal (*dimittendae*) of a wife, and yet does not forbid a pagan marriage to be set aside (*dimitti*), it follows that paganism may be accounted fornication."¹ S. Augustine here also repeats the argument which distinguishes between precept and counsel. "The Apostle says, 'I speak, not the Lord,' that the Lord may be understood, not indeed to command dismissal, lest the Apostle should seem to give counsel contrary to His command, but notwithstanding to permit (such dismissal), so that no one shall in that matter be bound by the necessity of command, but shall act freely on his own will in accordance with counsel."

*Letter to
Hilarius.*

The *rationale* of the permission to put away is stated by S. Augustine in a letter to Hilarius in the following terms: "If the unbeliever is unwilling to abide with the believing partner, let the latter recognise his freedom, and not deem himself so subjected to bondage that he should part with the faith itself in order not to part with an unbelieving consort."²

*The De
Conjugiis
Adulterinis.*

It may be well to notice next a long and instructive series of passages which is found in the *De Conjugiis Adulterinis* (circ. A.D. 419). That book represents the mature views of the great doctor, as it is separated from the earlier works which have just been noticed by a quarter of a century. Yet time has only confirmed the conclusions of the earlier writings, if it has introduced some difference of treatment in the argument on which those conclusions are based. He still insists that S. Paul's words, in dissuasion of putting away the unbelieving wife or husband, are words of counsel, and not words of command. To put away is lawful but not expedient. The

¹ S. Augustine, *De Diversis Quaestionibus lxxxiii.* (Migne's Ed. tom. vi. p. 100.)

² S. Augustine, *Epist. 157; ad Hilarium*, c. 31. (Migne's Ed. tom. ii. p. 689.)

reason why it is not expedient "is clearly expressed. For the Apostle decides against deserting unbelieving partners, not on account of a marriage *vinculum* which has to be maintained with such persons, but in order that they may be won to Christ."¹ Here we see something of clearer theology. The *vinculum*, which, as he had been teaching elsewhere, subsisted as a sacramental and indissoluble bond in the marriages of the members of the body of Christ, was not here in question. In other words, the non-Christian marriage was different in kind from the Christian marriage, and unable, by its own proper force, to bind as Christian marriage bound. But the continuance of the union under changed conditions was permitted and counselled in order to attain a specific end; viz., the winning of unbelievers to Christ.

The *vinculum*, not as in Christian marriage.

Although, however, S. Augustine thus expresses the view that the duty to continue the marriage is not to be derived from the existence of an indissoluble *vinculum*, he is still found using the argument that infidelity is fornication. "Wherefore if it were not lawful to put away an unbelieving wife, the Lord would forbid this to be done, and the Apostle, in deciding against it, would not say, 'I speak, not the Lord.' For if on account of the fornication of the flesh a man is permitted to separate from his wife, how much more to be detested in a wife is the fornication of the spirit, that is, infidelity?"² He repeats the same argument further on, insisting on the consequent lawfulness of putting away an unbelieving partner simply because of the unbelief, and then adds, "Although the believer preserves true chastity (*veram pudicitiam*) even with an unbelieving partner, who does not preserve true chastity."³ That is to say, in such a sanctioned union the Christian finds Christian marriage, holy, and rescued from the pollution of the Fall; while to the unbeliever the union continues wanting in the holiness of Christian marriage, and therefore he does not preserve *veram pudicitiam*. Because, however, there is no Divine prohibition to put away, but only an Apostolical counsel in restraint of such putting away, it is

Unbelief a fornication.

¹ S. Augustine, *De Conjugiis Adulterinis*, lib. i. c. 13. (Migne's Ed. tom. vi. p. 459.)

² *Ibid.* c. 17.

³ *Ibid.* c. 18.

not to be concluded, after the analogy of the marriage of a virgin, that he who putteth away doeth well, and only that he who putteth not away doeth better. Such putting away, however lawful, is not, in the case noticed by the Apostle, expedient, and it is not therefore doing well.

Lawful to
put away,
but
unlawful
to marry
again.

Argument
from
analogy
of fornication.

There is thus no question as to what were S. Augustine's views on the point of the lawfulness of putting away in the case of a married convert. It appears, however, that subject to certain reservations S. Augustine did not hold that a Christian convert who thus put away the unbelieving partner was at liberty to marry again. It has been noticed that he continually insists upon the argument that since a wife or a husband may be put away for unbelief, and since also fornication is the only Divinely-sanctioned ground for putting away, therefore unbelief is a species of fornication. Doubtless one great reason for S. Augustine's insistence is his strong feeling that spiritual fornication should be held sufficient ground for putting away, even among Christians, a feeling to which reference has been made elsewhere, and which was shared with S. Augustine and by other Christian writers. But if the character of fornication thus ascribed to unbelief is the sole ground of the permission to put away; and if it be held, as was held by S. Augustine, that separation of life in consequence of fornication does not carry with it the liberty of remarriage, then neither is remarriage authorized when the separation of life is a consequence of the unbelief of the partner. Accordingly we find S. Augustine following his arguments to their very conclusion, notwithstanding expressions made at other times to the effect that the indissolubility of the *vinculum* is proper to Christian marriage.

Thus at the end of c. 18 he says that if the unbelieving partner who is put away should remarry, his union is adulterous. Such persons are "bound by adulterous ties." There is, however, an alternative reading which rejects these words.

Again in c. 25, commenting still on the words of S. Paul, he says:

"And so let him be heard as teaching that, although this is lawful to be done, because the Lord does not utter this

(counsel), yet it should not be done, because it is not expedient. For the Apostle teaches very plainly that not all things which are lawful are expedient, as we have just shown above. Yet by reason of no sort of fornication whatsoever, whether of the flesh or of the spirit (where unbelief also is understood) is it permitted, when the husband has been dismissed, to marry another wife, since our Lord makes no exception when He says, 'If a wife put away her husband, and be married to another, she committeth adultery, and whosoever putteth away his wife and marrieth another committeth adultery.'"

Here then S. Augustine's argument has led him to a distinct pronouncement, that it is not lawful for one who has dismissed wife or husband for unbelief to marry again. It should be noted indeed that the case here determined does not expressly include the case of those Christians whose unbelieving husbands or wives have not been willing to remain: however, the argument employed may be held to embrace these by necessary inference.

S. Augustine's conclusion in this matter was, however, far from satisfying himself. It is at this point that he expresses himself as to the grave difficulty of these questions in words which have become almost proverbial: "While I have thus treated and discussed those points as far as my capacity admits, I am nevertheless not ignorant that this question of marriage is obscure and involved in the highest degree. Nor do I dare to affirm that either in this work, or in any other, I have as yet unfolded all its windings, or that, if called upon, I should be able to do so even now."¹

S. Augustine's sense of the difficulty of the subject.

It is never fair to dwell too much upon a conclusion arrived at by the way as a corollary to an argument used for some other end. S. Augustine's argument in the *De Conjugiis Adulterinis* is directed to the disproof of the contention of Pollentius that, since S. Paul gave an instruction that the believer should abide with the unbeliever if the latter for his part was willing to abide, therefore the believer was bound so to abide. Not necessarily, argues S. Augustine, for

Not fair to press too far a conclusion arrived at by the way.

¹ S. Augustine, *De Conjugiis Adulterinis*, lib. i. c. 25.

(1) S. Paul's words are words of counsel, not of precept, and (2) infidelity is a form of fornication, and fornication admits of separation of life. S. Augustine is therefore arguing on the side of indulgence, and without controversy he expresses his agreement with the strict view as to remarriage, so strengthening his position in favour of the lesser indulgence.

Prohibition
of re-
marriage.
The con-
temporary
practice.

It seems also to be indisputable that in this expression of opinion S. Augustine was only asserting as a principle what was the actual practice of the Western Church in his day—at least in the case of catechumens of long standing. In the *De Fide et Operibus* he is opposing certain persons, of whom he says that, among other things, “it moved them that baptism is refused to men who had put away their wives and married others, or to women who had put away their husbands and been married to others; because our Lord Jesus Christ, without any manner of doubt, testifies such to be not marriages, but adulteries. For they were not able to deny that to be adultery which the Truth affirms without reserve to be so.”¹ The Church thus did in S. Augustine's time refuse baptism, though not without provoking a murmur, to catechumens who had divorced their wives and married others. It is clear, therefore, that in the hundred years which had elapsed since the holding of the Council of Eliberis there had been in this matter an entire change of front, if indeed the canons of Eliberis may be taken as representing the general practice of the Western Church. As has been seen, in the view of those canons marriages contracted before baptism did not necessarily possess the indissoluble character. In their view the catechumen had been still the non-Christian, the Pagan, or the Jew, as the case might be. He was, to use a modern missionary phrase, “under instruction,” and that was all. He might be a professor of the faith, but so long as he delayed his baptism he was no member of the body of Christ, and was to be treated accordingly. On the other hand, the Church of S. Augustine's day practically treats the catechumen as bound by the Christian law. As we have already indicated, history supplies an excellent practical reason. When the

¹ S. Augustine, *De Fide et Operibus*. (Migne's Ed. tom. vi. p. 198.)

catechumen was a person who had grown up, as it were, within the precincts of the Christian Church, externally a Christian, not yet, by baptism, of the body of the faithful, it would become a crying scandal that he should permit himself the license of the heathen, and it would become a necessity of discipline that the Church should not permit him such unchristian license. In the interest alike of the Church and of himself the catechumen would have to be restrained. If he contracted marriage he would have to understand that when the day came in which he should seek the laver of regeneration he would not be permitted to throw aside his marriage with the easy license admitted by the Roman law. The Church had her conditions to make with him.

The practical difficulty is thus clear enough. The necessity of some such solution of the difficulty as is supplied by the regulations which actually found place is also obvious. It is further probable that there would be confused arguments to explain the ecclesiastical regulations in use as being of Divine authority. The facts of the existing practice were (1) that a catechumen was an unbaptized person, and therefore no member of Christ, and (2) that the Church held him to be bound as the baptized members of Christ were bound. The *prima facie* reason would seem to the enquirer to be that the Divine law of the indissolubility of marriage held Christians and non-Christians with the same binding force. And it cannot therefore be great matter of surprise that S. Augustine should have held that remarriage was Divinely prohibited, at any rate to the believer whose unbelieving partner was willing to abide, and presumably in every case of a married convert.

Yet his deep sense of the difficulties which surrounded his conclusions found, as we have seen, most touching expression; and he is of opinion that, at any rate in two specific cases, a concession might be made to the catechumen, which would not be made to the *Fidelis*.

(1) The *Fidelis* who should die and make no sign after years passed in an unsanctioned union would be allowed to pass away without the *viaticum* of the faithful; but in the case of a

Con-
cessions.

catechumen S. Augustine was for more lenient usage: "Those catechumens, who being bound in marriage to living persons persist in adulterous connexions, as long as they are in health, we may not admit to baptism. Nevertheless, if they lie in hopeless sickness, and cannot answer for themselves, I think that they ought to be baptized, that this sin also, among the rest, may be washed away in the laver of regeneration. For who knows whether they might not have made up their minds to be holden in that snare only unto the time of their baptism?"¹

(2) So again the *Fidelis* whose wife was guilty of adultery might put her away, but, as has been seen elsewhere, might not on that account contract marriage with another woman. Speaking, however, of candidates for baptism, S. Augustine says: "Again, whosoever hath put away a wife taken in adultery, and married another, does not seem as if he ought to be on the same footing with those who divorce and remarry for some other cause than adultery. And in the dictates of GOD Himself it is so obscure whether he who unquestionably may dismiss an adulteress is yet to be judged an adulterer if he marry another that, as far as I can judge, one may pardonably err on that point."²

It may be said that the first of these concessions is of no theological moment, since baptism is only accorded on the assumption that the existing union would be surrendered if the sick man could express himself. This is true; and perhaps the concession should not be regarded so much as indicating that the offence itself was any less adultery in S. Augustine's view, as that the sinfulness of the same offence is widely different in a baptized Christian and in a person unbaptized, and that penance should be tempered accordingly.

The concession of remarriage to the catechumen who has divorced an adulterous wife is, however, of great theological moment. It means that the usage of the Church, or his own sense of right, or both, would not permit S. Augustine to follow his argument to its legitimate conclusion at all hazards. He

¹ S. Augustine, *De Conjugiis Adulterinis*, lib. i. c. 28. (Migne's Ed. tom. vi. p. 470.)

² S. Augustine, *De Fide et Operibus*, c. 19. (Migne's Ed. tom. vi. p. 221.)

was not prepared to say that the marriage bond was indissoluble in such a case.

Subject to this exception we find that S. Augustine concludes, although with hesitation, that remarriage is not open to the believer who puts away an unbelieving partner. Whether the case of the believer who is put away by the unbeliever is exactly on the same footing does not appear.

When, however, we come to question S. Augustine on the great principle which must ultimately determine the conclusion in this matter, the principle of the dissolubility or indissolubility of non-Christian marriage, we find him teaching in a different strain. In the *De Bono Conjugali*, after dwelling upon the indissoluble character of Christian marriage, he goes on to say: "Nevertheless the case is not so with a wife except in the city of our God, in his holy mountain. For as to the laws of the *gentiles*, that their tenor is different, who knoweth not? Among whom divorce taking place without any such guiltiness as may incur a penalty from man, she is married to whom she will, and he marieth whom he will. Something like this custom, because of the hardness of the Israelites, Moses seems to have permitted in the matter of the bill of divorce, which looks more like a stigma cast upon divorce than a sign of approval of it."¹ Again: "A marriage once contracted in the city of our God, wherein even from the first connexion of two human beings marriage brings with it a kind of sacrament, can no way be dissolved but by the death of one of the parties."² And again: "The advantage of marriage therefore for all nations and all men is found in its being the cause of the begetting of children, and in the fidelity of chastity; but as regards the people of God it is found also in the sanctity of the sacrament, by which it is wicked for a woman, withdrawing even by divorce, to be married to another while her husband is living, not even for very offspring's sake—which being the sole cause why marriages take place, nevertheless the nuptial bond is not dissolved but by the death of one of the parties, even though the result follow not, for the sake of which they are married."³

Is non-Christian marriage dissoluble?

¹ S. Augustine, *De Bono Conjugali*, lib. i. c. 7, 8. (Migne's Ed. tom. vi. p. 379.)

² *Ibid.* c. 15.

³ *Ibid.* c. 24.

It would appear therefore that S. Augustine was prepared to draw a very real distinction on the point of indissolubility between Christian marriages and the marriages of persons in the fallen state outside Christianity. Keble says of the treatise *De Bono Conjugali*: "It is very valuable, too, as a distinct acknowledgment that heathen marriage is not, and ought not to be treated as, indissoluble."¹ The same distinction is drawn in the *De Nuptiis et Concupiscentia*.²

S. Augustine's arguments mutually destructive.

It is necessary to weigh S. Augustine's arguments as well as his conclusions. In truth, the two arguments we have referred to are mutually destructive. If the indissolubility of Christian marriage is dependent on its Christian or sacramental character, then "heathen marriage is not, and ought not to be treated as, indissoluble." If the ground on which a deserted married convert may remain separate is not that the former marriage was devoid of the indissoluble character, but merely that infidelity is fornication, then the *vinculum* must be understood to exist and remarriage to be forbidden.

Mixed marriages contracted as such.

So far we have noticed S. Augustine's views only on the subject of the remarriage of converts, and not as regards mixed marriages entered upon as such in the first instance. In this matter also the prevalent tone of the age largely affected S. Augustine's view. In the *De Fide et Operibus*, commenting on the uncompromising attitude of S. Cyprian with regard to mixed marriages, he says: "Which (marriages) in our days are no longer accounted to be sins, since in truth nothing is enjoined in the New Testament on that head; and accordingly it has been believed that (such marriages) are either permissible, or disregarded as of a doubtful character."³ Similarly in the *De Conjugiis Adulterinis* he says: "For in the time of the revealed New Testament I do not find that it has been unambiguously declared in the Gospels or in any of the Apostolic epistles whether our Lord has forbidden the faithful to be joined to unbelievers."⁴ He introduces the statement, however

S. Augustine undecided on the general question,

¹ Keble, *Sequel of the Argument*, &c., p. 114.

² S. Augustine, *De Nuptiis et Concupiscentia*, lib. i. c. 17. (Migne's Ed. tom. x. p. 424.)

³ S. Augustine, *De Fide et Operibus*, c. 19. (Migne's Ed. tom. vi. p. 221.)

⁴ S. Augustine, *De Conjugiis Adulterinis*, lib. i. c. 25. (Migne's Ed. p. 469.)

by remarking of the phrase "only in the Lord" that it may be taken in two ways, either as "remaining a Christian" or "marrying a Christian." That the son of S. Monnica should have been unwilling to admit that mixed marriages were altogether prohibited is intelligible; and while his alternative meaning for *ἐν κυρίῳ* is exclusively his own, and finds no support in early times or in the Greek writers, it is true that there is no entire unanimity in rendering the phrase *ἐν κυρίῳ* as having special reference to the Christian state at all. While, however, S. Augustine is thus undetermined in his general statements on the subject, in a particular case which came within the scope of his influence he took a decided line. The letters to Rusticus and Benenatus appear to refer to the same case of contemplated marriage. It was proposed to marry a Christian lady to one who was "up to the present time a pagan." To the Bishop Benenatus, who was favourably disposed to the marriage, S. Augustine writes, reminding him that in his episcopal fatherhood he ought to have a care for the Catholic Church, "that you should not effect that (marriage) with any soever, if indeed, as I have said, that be true which I have heard, but rather with a Catholic household, from which the Church may have not merely no opposition, but even faithful support."¹ Writing to Rusticus, S. Augustine assumes that he knows "that a Christian woman can only be given by us to a Christian man; yet thou has not been willing to pronounce any such thing to me concerning thy son, whom I hear to be up to the present time a pagan."²

but firm
in a
particular
instance.

The teaching of S. Augustine on the subject under notice may then be summarised as follows. He holds that the teaching of S. Paul, that a married convert should not leave the unbelieving partner, if he be willing to abide, is a counsel only, not a command, and that therefore, even in this case, separation of life is permissible, though ordinarily inexpedient; he holds that infidelity is a species of fornication, and that as such it is a sufficient ground for separation; he expresses himself occasionally to the effect that the indissoluble *vinculum*

Summary
of
S. Augus-
tine's
teaching.

¹ S. Augustine, *Ep.* 253, *ad Benenatum*. (Migne's Ed. tom. ii. p. 1069.)

² S. Augustine, *Ep.* 255, *ad Rusticum*. (Migne's Ed. tom. ii. p. 1070.)

is proper to Christian marriage; he does not, however, admit the liberty of remarriage in the case of a married convert leaving the unbelieving partner, except perhaps in the case of the adultery of such unbelieving partner; it appears from his remarks that the general practice of the Church of his day was to hold catechumens bound by the full stringency of the Christian law of marriage; he is not clear as to whether mixed marriages in the first instance between a Christian and a non-Christian should be allowed, but when a particular case comes before him he stoutly combats its rightfulness.

S. Innocent
I. Con-
troversy on
clerical
digamy.

The letters of S. Innocent I. on the digamy of the clergy may be cited as being an important illustration of a controversy which has a certain bearing on our subject.¹ The controversy itself does not belong to an investigation into the Divine laws of marriage, but rather to the theology of Holy Orders. It would not therefore be in place to cite here all authorities which deal with it; but no apology need be made for quoting Dr. Von Döllinger's able summary of them.

"In the Apostolical Constitutions 6, 17, and in the 17th Apostolical Canon, it is declared that one who has married a second time cannot be received into the order of clergy. Yet the canon adds the condition, 'if he did not take his first as well as his second wife until after baptism.' This has always remained the principle of the Greek Church; only he was looked upon as impeded by digamy who had married again² *as a Christian*. If he had concluded the second marriage before baptism, it was supposed that the stain of incontinency involved in second marriage was taken away by the washing of baptism, and that consequently no impediment stood in the way of his entering the clerical order. In the Latin Church both theory and practice were different. Here it was merely affirmed that the cleric must be the most perfect example possible to his congregation; that if he had married twice he

¹ *Innocentius universis episcopis in Toletana synodo constitutis, dilectissimis fratribus, in Domino salutem.* (Migne's Ed. *Patrologia Latina*, tom. xx. p. 493.)

Ibid. *Victricio Episcopo Rotomagensi*, cp. ii. c. 26. (Migne, p. 474.)

Ibid. *Rufo, Eusebio, Eustathio, Claudio et caeteris, episcopis Macedonibus et diaconis.* (Migne, p. 526.)

² i.e. twice as a Christian.

became useless as a preacher of continence. Therefore the Popes, especially Siricius and Innocent I., and before them S. Ambrose, then S. Augustine and others, insisted that even those who had taken the one wife before baptism, but the other as Christians, must remain excluded from clerical office. Men who married widows were placed in the same category. The Synods in Gaul, Spain, and Africa drew up their canons about second marriages on the same principles. The Bishops at Valence, in the year 374, ordered that at the ordination of a cleric the difference whether he had married again before or after baptism could not be recognised.¹ The Synod of Agde decreed, in the year 506, that presbyters and deacons who, in spite of their second marriage, had been ordained contrary to ecclesiastical law, should not exercise their ecclesiastical functions any longer; and the Synod at Carthage, in the year 398, even deprived a bishop, who should knowingly ordain a digamist, of his power of ordination. Meanwhile the Oriental view of second marriages came more than once into conflict with that of the West. Thus the Bishops of Illyricum, in the year 414, stated in a letter to Pope Innocent² that with them a man who had had and lost a wife as a catechumen, but had taken another after baptism, would not be regarded as a digamist, for the first marriage was taken away with the rest of his sins by baptism. This view the Pope expressly contested—that which was good and innocent in itself, such as marriage, could not be done away by baptism; he asked whether, then, the children of such a marriage were to become illegitimate through the father's baptism. Even S. Jerome adopted the standpoint of the Orientals. His friend Oceanus maintained that a Spanish Bishop, Carterius (against whom no other charge lay than that after the death of his wife, married before baptism, he had married again as a baptized Christian), had been ordained contrary to the Apostolical precept. Jerome,³ on the contrary, defended the ordination of this man, whose case did not fall under the ecclesiastical

¹ C. 1, *Canones Apostolorum et Conciliorum*, Ed. Bruns. II. iii. 146; I. 148.

² *Epistolæ Pontiff. Rom.* Ed. Constant. p. 331.

³ *Ep. 69, Opp.* Ed. Paris, 1846, i. 654.

idea of digamy, and declared (certainly with exaggeration) that the world was full of such ordinations. Yet when Rufinus attacked him on the point he moderated his declaration to this, that there were some bishops in the Church who found themselves in the same position as Carterius; and submitted that he had merely given his opinion in answer to a question, without at all claiming that it must hold good.¹ In the West, later on, we find only Gennadius of Marseilles on the side of Jerome; he states the rule of the Church in this way—that he who has been twice married after baptism cannot be ordained;² in opposition to which Pope Leo, in his letter to the African bishops in the year 446, still required universally that no one who had previously concluded a second marriage might remain in the priesthood.³ In the East, however, Theodore of Mopsuestia endeavoured to alter the dominant custom.”⁴

Most English Churchmen will feel that in the various questions affecting the marriage or celibacy of the clergy, the Eastern Churches are on surer ground than the Churches of the West, and the controversy as to digamists would seem to be no exception. If the ground of S. Paul's instruction, that a bishop should not be a digamist, is merely the fact that his life has seen more than one sexual connexion, and is therefore continent only in a minor degree, then it is difficult to see how it is possible to meet the objection of S. Jerome, who says that a life of irregular indulgence before baptism should prove a greater bar to ordination than any mere repetition of marriage. If, however, the ordinary Eastern standpoint is accepted, which sees in Christian marriage an ordinance so holy that though a repetition may be conceded, such repetition is to be regarded as a concession to human weakness, and as in some sort a dishonouring of the former tie, then the Eastern rule is entirely consistent. It is only Christian marriage which is thus holy, or which can thus come under a shadow of dishonour.

¹ *Apol. adv. Rufin.* i. c. 32, *Opp.* ii. 424.

² *De Eccles. dogm.* c. 71, Ed. Elmenhorst, p. 38.

³ *Opp.* Ed. Ballerini, i. 674.

⁴ Von Döllinger, *Hippolytus and Callistus*, English trans. pp. 134-136.

Marriages or other unions prior to baptism are not to be counted. They probably never accepted the high conditions of Christian marriage, and they certainly never rose to its sanctity. Such as they were, with all their imperfections upon them, they may well be forgotten in the laver of regeneration, for all the purposes of Christian discipline. But those who repeat Christian marriage, while they may be suffered among the faithful, are not to be preferred to the high spiritual offices of the Christian Church. It is clear that such a view would be very naturally held by those who maintained the right of the Christian convert to remarry.

Theodoret (A.D. 387-453), commenting on S. Paul, understands Theodoret. that the believing party ought not to give ground for separation, but that if the separation be caused by the unbeliever the believer is blameless.¹ Whether in Theodoret's view remarriage is open does not appear. Mixed marriages between Christians and non-Christians may not be entered upon. The command to marry "only in the Lord" is a command to marry only "one of the same faith and pious, in all sobriety and lawfulness."²

The Council of Chalcedon (A.D. 451) had to legislate against Council of Chalcedon. the abuse of the marriages of the lower members of the clerical body, such as readers and singers, with heretical wives. When such marriages had already taken place provision was made for the due safeguarding of the faith of the children who, among other precautions, are not to be united in marriage "with a heretic, or a Jew, or a Greek," unless such person "promise to become a convert to the orthodox faith."³

The Councils of the sixth century in the West, notwithstanding the fact that some of them fall chronologically within the period now under review, may be best noticed in connexion with the next period, with which they have more natural affinity. The era of Justinian does not, with them, represent any natural break.

Reviewing the period from Constantine to Justinian, as regards mixed marriages and the position of married converts, we Summary of period.

¹ Theodoret, on 1 Cor. vii. 13, 14. (Migne's Ed. tom. iii. p. 277.)

² *Ibid.* on 1 Cor. vii. 39. (Migne, p. 285.)

³ Mansi, tom. vii. p. 363.

Frequency
of mixed
marriages.

notice certain features as prominent. One is the frequency of the abuse by which a Christian woman was united to a non-Christian husband. Of this abuse Nonna, S. Monnica, Laeta, and the wife of Synesius, are examples. S. Jerome, with whatsoever exaggeration he may be held to speak, must be referring to a custom of some prevalence when he says that "very many matrons" who had contracted marriages with non-Christians would "be furious against" him. Practice affected both legislation and theory. The utterances of the Councils are halting and partial. Either, as by the Council of Arles, the offender is put to penance for the fault, but eventually reconciled without being required to give up the marriage, or as by various African Councils, and by the Council of Chalcedon, the stricter discipline of the Church is not extended beyond the families of the clergy. S. Augustine is of opinion that even Holy Scripture is not clear upon the subject, and while admitting that S. Cyprian had been very decided in his opposition to all mixed marriages, he remarks that in his own day such marriages are not accounted sins.

Councils
halting
and
partial.

Some
indecision
of theory.

Causes—
(1) Cate-
chumens.

Various important influences may be discerned at work predisposing to this laxity. (1) The vast increase in the number of those catechumens who held back from baptism must be placed foremost. These men were by profession Christians, and they would be prone to seek Christian wives. Whether they were sufficiently Christians to be allowed to marry baptized women would to many seem a difficult question. Certainly their case was open to more consideration than that of the heathen who sought a Christian woman in marriage; and even such cases had not been altogether rare in the experience of the Christian Church. Certainly, again, if the catechumen must marry as such, he ought not to marry a heathen woman. Practically the Church may be said to have decided during this period in favour of the catechumen. Yet all the time the catechumen was unbaptized. And if one unbaptized man might marry a Christian woman, it was an easy step to the admission of another. If a catechumen, why not a *gentilis*? And so the circles of laxity would widen.

(2) The simple throwing over of Church restraint by Christian parents, in the matter of mixed marriages, would almost certainly result from the laxity of Christian society, in the period following the conversion of Constantine. People of position would still at times experience some difficulty in finding suitable husbands for their daughters within the Christian circle, and would thereupon simply go outside that circle. If the benediction of the Church should not be accorded, they would dispense with it. Discipline in such matters was in fact paralysed.

(3) The confusion of thought, which during the age between Constantine and Justinian treated baptized heretics as on the same plane with the heathen in the matter of marriage, would have some influence. If the baptized heretic was no better than the heathen, then the heathen was no worse than the baptized heretic. And as regards baptized heretics, the clergy themselves were, in the lower ranks, all too prone to regard union with them as permissible even in their own cases.

The fact of the practice of mixed marriages between Christians and non-Christians is thus undoubted, and the reasons for it not far to seek. It has, however, been seen that, notwithstanding the hesitancy of S. Augustine, other Christian writers are by no means in favour of the sufferance of these mixed marriages. S. Ambrose says that it is not enough for the woman, whom a *fidelis* would marry, to be a Christian, unless she, as well as her husband, has "been initiated by the sacrament of baptism." S. Jerome says that Christian women who enter on such marriages "have prostituted the members of Christ." S. Augustine might express the view that the matter was open to doubt, but in a particular case which came before him he may be said to have gone out of his way to emphasize the wrongfulness of the practice. Theodoret sees in the command to marry "only in the Lord" a command to marry only a Christian.

On the whole, it may be said of the period from Constantine to Justinian, in the matter of marriages between Christians and non-Christians, (1) that its practice was very lax, (2) that its theory was on the whole adverse to the laxity which found

(2) Christian parents impatient of restraint.

(3) Confusion of heathens and heretics.

But writers of weight oppose the prevalent laxity.

place in its practice, and (3) that its discipline confined itself to the practicable, which was but little.

Re-
marriage
of converts
not
favoured.

It may seem at first sight strange that a period thus characterised by laxity in the matter of mixed marriages should, at least in Africa, be the strictest of all the periods of the Christian Church in its attitude towards the divorce and remarriage of converts. But in truth there is the closest and most natural relationship between these two aspects of the period. The very fact that catechumens were not uncommonly admitted to marriage with Christian women, and that this concession was sometimes extended even to a *gentilis*, made it simply imperative in the interests of the Christian partner, that the same high conditions which were to her involved in marriage should be required of the unbaptized man before he could be admitted as her husband. In the case of a Christian husband nothing short of these conditions would be admitted, and it would have been simply monstrous if anything short of them had been admitted in another.

Reason
found in
the cate-
chumens.

Again, supposing that a catechumen wished to marry, not a Christian woman, but a catechumena, or even a *gentilis*, it was clearly against the interests of Christian discipline that people professing Christianity, even though not baptized, should be allowed to contract unions of the lax or temporary character too much in vogue among the Romans. They must be distinctly made to understand that the Christian Church would hold them bound, as it held its own members bound. Otherwise scandal would be inevitable, and all kinds of complications would ensue. Accordingly the tendency of the period was to treat catechumens as bound by the same laws of marriage as baptized Christians. But it is evident that if catechumens, and even under certain circumstances those who were altogether alien from the Church, were thus treated as bound by the Christian laws of marriage, the distinction between Christian and non-Christian marriage would become hopelessly confused, and that the tendency would be to ignore the distinction altogether. The stricter would hold the catechumen indissolubly married, as S. Augustine did; the less strict might

be disposed to hold that Christian marriage was no more indissoluble than non-Christian.

It is thus not difficult to find an explanation for the view of S. Augustine, and for the strictness of the practice of at least the African Churches of his day. It would, however, as we have seen, be an entire mistake to suppose that during this period the right of the married convert to divorce and re-marriage fell out from the teaching of the Church. S. Chrysostom holds that the great concession of the Apostolic instruction lies, not in the permission to divorce, but in the permission to continue an unequal marriage. Separation is permitted if the unbeliever be the cause of it, whether by desertion or by unrighteous demands. Separation appears with S. Chrysostom to involve the right to remarry. S. Ambrose understands "that the Apostle denied that it was of the law Divine that any marriage whatsoever should be dissolved . . . but he took away all blame from the partner deserted," presumably if such partner contracted a second marriage. S. Jerome also probably admits remarriage, as well as the right of separation. Ambrosiaster is unmistakeable in his assertion of the right of remarriage. The long controversy with regard to the ordination of digamists, in which it was held on one hand that marriages prior to baptism ought not to count, shows the strong feeling prevalent that Christian marriage was different from, and holier than, marriage outside Christianity. Theodoret teaches that the Christian partner is free from blame if the unbeliever bring about the separation.

But
right of
remarriage
maintained
by various
writers.

C. *The East after Justinian.*

AUTHORITIES.

THE NICENE ARABIC COLLECTION OF CANONS.

*Canon 67.*¹

. . . et quaecunque mulier fidelis viro infideli nupserit, ipsa quoque a communione fidelium separetur: quae si poenitentiam maleficii egerit, et eum virum, quem habere non poterat, id est infidelem, dimiserit, non est recipienda, nisi eo modo, quo recipitur is, qui postquam fidem negavit, ad fidem revertitur; debetque ipsa

¹ Mansi, tom. ii. p. 975.

infidelem relinquere: erit autem poenitentia ejus qui ad fidem revertitur, et ejus quae virum infidelem reliquit, ferre cilicium, dormire super cinerem: constituendumque est eis de jejunio et de bonis operibus, prout conveniat; et postea licebit cum fidelibus conversari, et communionem sacram accipere; et qui contradixerit, a synodo excommunicatur.

COUNCIL IN TRULLO (QUINISEXT), A.D. 692.

Canon 72.¹

Μὴ ἐξέστω ὀρθόδοξον ἄνδρα αἵρετικῇ συνάπτεσθαι γυναικί, μήτε μὴν αἵρετικῷ ἀνδρὶ γυναῖκα ὀρθόδοξον ζεύγνυσθαι· ἀλλ' εἰ καὶ φανῇ τι τοιοῦτον ὑπὸ τινος τῶν ἀπάντων γινόμενον, ἄκυρον ἡγείσθαι τὸν γάμον, καὶ τὸ ἄθεσμον διαλύεσθαι συνοικέσιον. οὐ γὰρ χρὴ τὰ ἁμικτα μιγνύναι, οὐδὲ τῷ προβάτῳ λύκον συμπλέκεσθαι, καὶ τῇ τοῦ χριστοῦ μερίδι τὸν τῶν ἁμαρτωλῶν κλῆρον. εἰ δὲ παραβῇ τις τὰ παρ' ἡμῶν ὀρίσθέντα, ἀφοριζέσθω. εἰ δέ τινες ἔτι ἐν τῇ ἀπιστίᾳ τυγχάνοντες, καὶ οὐπω τῇ τῶν ὀρθοδόξων ἐγκαταλεγόντες ποίμνῃ ἀλλήλοις γάμῳ νομίμῳ ἡρμόσθησαν· εἴτα ὁ μὲν τὸ καλὸν ἐκλεξάμενος τῷ φωτὶ τῆς ἀληθείας προσέδραμεν, ὁ δὲ ὑπὸ τοῦ τῆς πλάνης κατεσχέθη δεσμοῦ, μὴ πρὸς τὰς θείας ἀτενίσαι ἀκτῖνας ἐλόμενος. εὐδοκεῖ δὲ τῷ πιστῷ ἢ ἀπιστος συνοικεῖν, ἢ τὸ ἐμπαλιν ὁ ἀπιστος τῇ πιστῇ, μὴ χωρίζεσθωσαν κατὰ τὸν θεῖον ἀπόστολον. ἡγιάσται γὰρ ὁ ἀπιστος ἀνὴρ ἐν τῇ γυναικί, καὶ ἡγιάσται ἢ ἀπιστος γυνὴ ἐν τῷ ἀνδρὶ.

THEOPHYLACT.

In 1 Cor. vii.²

“Τοῖς δὲ λοιποῖς κ.τ.λ.” Τί λέγεις; ἂν μὲν ἀπιστος, μενέτω μετὰ τῆς γυναικός· ἂν δὲ πόρνος, οὐκέτι; Καίτοι χείρων τῆς πορνείας ἢ ἀπιστία. Χείρων μὲν· ἀλλ' ὁ Θεὸς μᾶλλον τὰ ἡμέτερα ἐκδικεῖ, ἢ τὰ οἰκεία. “Ἀφες γὰρ, φησὶ, τὴν θυσίαν σου καὶ καταλλάγηθι τῷ ἀδελφῷ σου. Καὶ τῶν μὲν μυρίων ταλάντων κατεφρόνησεν αὐτῷ διαφερόντων· τὴν δὲ εἰς τὸν ἑκατὸν δηνάρια ὀφείλοντα ὕβριν ἐξεδίκησεν. Οὕτως οὖν καὶ ἐνταῦθα τὸ τῆς ἀπιστίας εἰς αὐτὸν ἀναφερόμενον παρορᾷ· τὸ δὲ τῆς πορνείας κολάζει ὡς εἰς τὴν γυναῖκα.

Τινὲς δὲ φασιν ὅτι ἢ μὲν ἀπιστία κατὰ ἄγνοιαν γίνεται, ἣν καὶ εἰκὸς παυθῆναι, ὡς καὶ αὐτὸς φησι· Τί γὰρ οἶδας, γύναι, εἰ τὸν ἄνδρα σώσεις; Ἡ δὲ πορνεία, δι' ὁμολογούμενην πονηρίαν γίνεται. “Ἀλλως τε καὶ ὁ πόρνος ἔφθασεν ἑαυτὸν διαστήσας. “Ἄρας γὰρ τὰ μέλη αὐτοῦ ἀπὸ τῆς

¹ Mansi, tom. xi. p. 976.

² Migne's Ed. tom. ii. p. 644.

γυναικὸς ἐποίησε πόρνης μέλη. Ὁ δὲ ἄπιστος οὐδὲν ἡμαρτεν εἰς τὴν σαρκικὴν ἔνωσιν. Μᾶλλον μὲν οὖν δι' αὐτῆς ὕψως ἐνωθήσεται, καὶ κατὰ τὴν πίστιν· ἵνα μὴ λέγω, ὅτι καὶ ἀνατροπὴ ἐμελλε γίνεσθαι τοῦ βίου, καὶ διαβολὴ τοῦ Εὐαγγελίου, εἰ τὸ πιστὸν μέρος ἐχωρίζετο τοῦ μὴ πεπιωτευκότος. Ταῦτα δὲ νόει, ὅτε συνεζύγησαν μὲν ἐν ἀπιστίᾳ ὄντες ἀμφότεροι, ἐπίστευσε δὲ τὸ ἐν μέρος. Ἐὰν γὰρ προὔπῃρχε πιστὸς ὁ ἀνὴρ, ἢ ἡ γυνή, οὐδόλως ἐξῆν πρὸς ἄπιστον ζεύγινσθαι. Οὐ γὰρ εἶπεν, Εἴ τις βούλεται λαβεῖν ἄπιστον, ἀλλ', Εἴ τις ἔχει. Ἀλλ' οὐδὲ ἀπλῶς συνοικίζει τῷ ἀπίστῳ τὸ πιστὸν μέρος, ἀλλὰ βουλομένῳ. Τὸ γὰρ, Συνενδοκεῖ τοῦτο ἔστιν, ἀντὶ τοῦ, εἰ βούλεται.

Εἰ δὲ ὁ ἄπιστος χωρίζεται, χωρίζεσθω. Οἶον εἰ κελεύει σοι ἡ κοινωνῆσαι τῆς ἀπιστίας αὐτῷ, ἢ ἀναχωρεῖν τοῦ γάμου, ἀναχωρεῖτω. Βέλτιον γὰρ τὸν γάμον, ἢ τὴν εὐσέβειαν λυθῆναι.

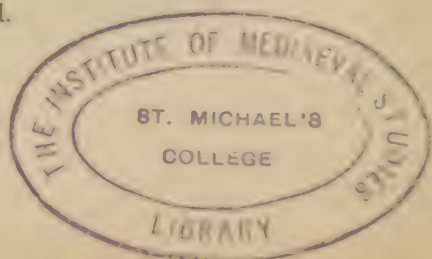
Οὐ δεδούλωται ὁ ἀδελφὸς ἢ ἡ ἀδελφή ἐν τοῖς τοιοῦτοις· ἐν δὲ εἰρήνῃ κέκληκεν ἡμᾶς ὁ Θεός. Εἰ μάχεται σοι, φησὶ, διότι μὴ κοινωνεῖς τῆς ἀπιστίας, διαζύγηθι. Οὐ γὰρ δεδούλωται εἰς τὰ τοιαῦτα· τοντέστιν, οὐ καταναγκάζει βαστάζειν αὐτὸν καὶ ἐν τοῖς τοιοῦτοις. Βέλτιον γὰρ ἀπαλλαγῆναι ἢ μάχεσθαι· ἐπεὶ οὐδὲ ὁ Θεὸς βούλεται τοῦτο. Ἐν γὰρ εἰρήνῃ κέκληκεν ἡμᾶς. Ὡστε εἰ μάχεται, ἐκεῖνος παρέσχε τὴν αἰτίαν τοῦ διαζυγίου.

In the East, from the period of Justinian onwards, it is on the whole true to say that mixed marriages between Christians and non-Christians have been peremptorily forbidden, and that the divorce and remarriage of Christian converts have been, under certain conditions, allowed. The East after Justinian.

The collection of canons known as the Nicene-Arabic is of uncertain date, though certainly not Nicene; and it is of no proper ecclesiastical authority. But the canons are at least interesting, as representing views in vogue at the time of their compilation or fabrication which may perhaps be referred to the sixth or seventh century.¹ In this light Canon 67 is very significant. It rules that a baptized Christian woman (*fidelis*) who marries an unbeliever is to be excluded from communion; and that she is only to be restored if she forsakes the The Nicene-Arabic canons.

¹ On the Nicene-Arabic Canons see Hefele, *History of the Councils*, Eng. tr. i. pp. 363, 364.

Renaudot refers the collection to the time of Muhammad.



unbeliever, and only then in the same way as one is reconciled who has denied the faith.¹ The ruling that such mixed marriages are not only to be held irregular, but that they are to be treated as in all cases null and void, is an advance in logical consistency on the pronouncements of the last period, but is distinctly different from those pronouncements. It was not the discipline of the fourth century, but it is a discipline which commends itself to the mind of the seventh century.

**The Civil
Law.**

The Civil Law, before Justinian, contained some provisions with regard to marriage between Christian Romans and non-Christians who were Jews or barbarians, but they were less of religious than of secular import. The same is true of the Novel issued by the Emperor Justin in A.D. 566, in which those mixed marriages which had taken place during the irruption of barbarians into the provinces of Osröene and Mesopotamia were ratified, but similar unions forbidden for the future.² It is to be remembered, however, that since Justinian, in his constitution of the 18th October, A.D. 530, had assigned to the sacred canons equal force of law with the secular statutes, the solemnization of marriages between believers and heathen was from that date abundantly irregular; but here again, as in the matter of divorce, irregularity and not invalidity would be the consequence of disobedience.

**The
Council
in Trullo.**

The most important of the utterances of the Eastern Church of this period upon the subject is to be found in the 72nd Canon of the Council in *Trullo* (A.D. 692). That Council, known in the West as the Quinisext, rules that any marriage between an orthodox Christian and a heretic is to be treated as null and void, on the ground that "it ought not to be that the incongruous should be mingled, or that a wolf should be conjoined with a lamb, or the lot of sinners with the portion of Christ."³ The canon goes on to provide that married converts may, notwithstanding, retain their partners if these, though unwilling to become Christians, are content to abide.

¹ Mansi, tom. ii. p. 975.

² Zachariä, *Jus Græco-Romanum*, iii. 8. (Also as Nov. 154 in the *Corpus Juris Civilis*.)

³ Mansi, tom. xi. p. 976.

The Canon of the Council *in Trullo* still fails to make the necessary distinction between the baptized heretic and the heathen, but so far at least as the heathen or non-Christian is concerned, the provisions of the canon have continued, and remain the law of the East at the present day.

Theophylact, Archbishop of Bulgaria in the eleventh century, ^{Theophylact.} wrote a commentary on 1 Corinthians, in which, as in his other commentaries, he is mainly indebted to S. Chrysostom. It is none the less interesting as shewing that the views of S. Chrysostom in the matter before us entirely commended themselves to a prelate of the time of Alexius Comnenus. He points out very distinctly that the Pauline privilege has nothing to do with those who being Christians would wish to contract for the first time a marriage with non-Christians. "But observe this, that they were united while they were both in unbelief, and that one party afterwards received the faith. For if either the man or woman had been one of the faithful before marriage, marriage with an unbeliever would have been altogether inadmissible. For he said not, 'If any desire to take an unbeliever,' but 'If any have.'" ¹ Theophylact understands *χωρίζεται* as S. Chrysostom understands it. "Therefore if he command thee either to share his unbelief, or to recede from the marriage, then let the marriage be receded from. For it is better that the marriage rather than that piety should be dissolved." *χωρίζεται* then is understood to mean not simply *departs*, but rather *is the cause of separation*.

The Eastern Churches do not shew any long line of difficulties on the subject of married converts, analogous to the experience of the later Western Church. They had taken the position that divorce was admissible, and admissible for several causes. The case of an unbelieving partner who was responsible for the separation was simply added to the list, and became one of the many recognised causes of divorce. It was too clear to the Eastern mind that the marriage was dissoluble; and it appears to have become more or less an accepted principle that the refusal of the unbelieving partner to be converted was sufficient ground for the issue of a divorce. Thus in the time of the

¹ Theophylact, in *1 Cor.* vii. (Migne's Ed. tom. ii. p. 644.)

Divorce
accorded
on the
ground of
unbelief.

Patriarch Theodotus II. (A.D. 1151-1153) Basilicus Bicinator applied for a divorce on the ground that his wife declined to follow him in accepting the Christian faith, notwithstanding his endeavours to convert her; and the Patriarch granted the divorce.¹

As in all other cases of divorce in the East, divorce in the case of a married convert carries with it the right to marry again.

Instances.

Instances of marriages contracted between Eastern Christians and those who were not Christians are not wanting in the later history of the East, but they occur under circumstances which deprive them of any religious significance. The Church might be overborne to acquiescence in such marriages, but her spirit has throughout been entirely opposed to them.

In the year 988, when Vladimir requested the hand of Anna, the sister of the Emperors Basil II. and Constantine VIII., the reply given to him was, that "it beseems not a Christian woman that she should become the wife of one unbaptized. But if thou wilt profess thyself a Christian, thou shalt receive the hand of the princess." Vladimir replied that he was ready for baptism, but required the emperors first to send him their sister as a pledge of their good faith. To this demand the emperors acceded, but before the wedding took place Vladimir was baptized in the church of the Panagia at Cherson. In the case of this marriage therefore the emperors were careful that Christian teaching should in all points be respected.

In some other cases it was not so. The Emperor Theophilus, in A.D. 838, desiring to marry his sister Helen to the Persian Theophobus, enacted a law to legitimate marriage between Romans and Persians. Maria Palaeologina, the daughter of the Emperor Michael VIII., Palaeologus (A.D. 1261-1282), was betrothed to Hulagu, the Khan of the Mongols, and after his death was married to his successor, Abaha-Khan. Euphrosyne, the daughter of the same emperor, was given in marriage as a child to Noga, a Scythian chieftain. Theodora, the daughter of the Emperor John VI. (Cantacuzene), married in A.D. 1346 the

¹ Zhishman, *Das Eherecht der Orientalischen Kirche*, p. 757.

Sultan Urkhan. Eudoxia Comnena, the daughter of Alexius III. of Trebizond, was married about A.D. 1380 to the Turkish Governor Tageddin. David II, the last emperor of Trebizond, sought to confirm his alliance with Usun Khagan, the leader of the Turcomans, by giving him his niece Catharine Comnena in marriage (A.D. 1456). Anna Comnena, daughter of the same emperor, was married to Mohammed Zagan, the Musalman Viceroy of Macedonia; but in this case the practice reached a lower deep by the perversion of Anna to Islam as a preliminary of the union, and theologically, therefore, the marriage had no pretension to the Christian character.¹

It is no secret that these evil examples have not failed to be copied by many Eastern Christians of less exalted position; but it does not appear that the Eastern Church has ever favoured the practice, or that her theory has anything but entire condemnation for such mixed unions.

D. *The West after Justinian.*

AUTHORITIES.

COUNCIL OF AGDE (A.D. 506).²

Canon 67.

Quoniam non oportet cum omnibus haereticis miscere connubia, et vel filios vel filias dare, sed potius accipere, si tamen profitentur Christianos futuros esse se et catholicos.

SECOND COUNCIL OF ORLEANS (A.D. 533).³

Placuit ut nullus Christianus Judaeam, neque Judaeus Christianam in matrimonio ducat uxorem, quia inter hujusmodi personas illicitas nuptias esse censemus. Qui si commoniti a consortio hoc se separare distulerint, a communionis gratia sunt sine dubio submovendi.

COUNCIL OF CLERMONT (Concilium Arvernense, 535 A.D.).⁴

Canon 6.

Si quis Judaicae pravitati jugali societate jungitur, et seu Christiana Judaeo, seu Judaeus Christianae mulieri carnali consortio misceatur, quicumque horum tantum nefas admisisse dignoscitur,

¹ This list is taken from Zhishman, *Das Eherecht der Orientalischen Kirche*, p. 511.

² Mansi, tom. viii. p. 336.

³ *Ibid.* p. 838.

⁴ *Ibid.* p. 861.

a Christianorum coetu atque convivio, et communione ecclesiae, cujus sociatur hostibus, segregetur.

THIRD COUNCIL OF ORLEANS (A.D. 538).¹

Canon 13.

Christianis quoque omnibus interdiciamus, ne Judaeorum conjugiiis misceantur: quod si fecerint, usque ad sequestrationem, quisquis ille est, communione pellatur. . . .

COUNCIL OF ORLEANS (A.D. 541).²

Canon 31.

Hoc etiam decernimus observandum . . . si Judaeus Christianam ancillam suam sibi crediderit sociandam . . . mancipiorum amissione multetur.

THIRD COUNCIL OF TOLEDO (A.D. 589).³

Cap. 14.

Suggerente consilio, id gloriosissimus dominus noster canonibus inserendum praecipit, ut Judaeis non liceat Christianas habere uxores vel concubinas, neque mancipia Christiana comparare in usus proprios: sed et si qui filii ex tali conjugio nati sunt, assumendos esse ad baptismum. . . .

FOURTH COUNCIL OF TOLEDO (633 A.D.).⁴

Canon 63.

Judaei qui Christianos mulieres in conjugio habent, admoneantur ab episcopo civitatis ipsius, ut si cum eis permanere cupiunt, Christiani efficiantur. Quod si admoniti noluerint, separentur: quia non potest infidelis in ejus permanere conjugio, quae jam in Christianam translata est fides. Fili autem qui ex talibus nati existunt, fidem atque conditionem matris sequantur. Similiter et hi qui procreati sunt de infidelibus mulieribus et (in)fidelibus viris, Christianam sequantur religionem, non Judaicam superstitionem.

SEVENTEENTH COUNCIL OF TOLEDO (694 A.D.).⁵

Sed et filios eorum (Judaeorum) utriusque sexus decernimus, ut a septimo anno eorum nullam cum parentibus suis habitationem aut societatem habentes, ipsi eorum domini, qui eos acceperint, per

¹ Mansi, tom. ix. p. 15.

² *Ibid.* tom. ix. p. 118.

³ *Ibid.* tom. vi. p. 996. ⁴ *Ibid.* tom. x. p. 634. ⁵ *Ibid.* tom. xii. p. 102.

fidelissimos Christianos eos nutriendos contradant, ea scilicet ratione, ut et masculos Christianis foeminis in conjugio copulent, et foeminas Christianis similiter viris maritali societate adjungant.

COUNCIL OF TARRAGONA (Tarraconense Concilium, 1239 A.D.).

*In quo constitutiones episcopi Sabinensis confirmantur.*¹

Canon 4.

Contra Judaeos et Sarracenos.

Item, statuimus, quod Judaei et Sarraceni a Christianis in habitu distinguantur, et nutrices vel mulieres non teneant Christianas. Et si quae sunt Christianae, quae Judaeis vel Sarracenis cohabitent, nisi infra duos menses a tempore publicationis istius constitutionis recesserint, quantumcumque poenitentiam fecerint, nunquam tradantur ecclesiasticae sepulturae, nisi de metropolitani licentia speciali.

COUNCIL OF TRIBUR (895 A.D.).²

Cap. 39.

Si quis alienigenam in matrimonium duxerit, habere debet.

Synodus Romana ait: Quod non dimittenda sit uxor post baptismum, quae habita est et ante baptismum. In baptismo solvuntur crimina, non tamen legitima conjugia. Cum enim in baptismo transmigrat de vita in vitam, et non mutat uxorem legitimam, quomodo mutat eam, qui non mutat vitam, sed transit de gente ad gentem.

THEODORE'S PENITENTIAL.

Book i. c. 12.³

§ 17. Si quis dimiserit gentilis gentilem uxorem, post baptismum in potestate eis⁴ erit, habere eam vel non habere.

§ 18. Simili modo, si unus eorum baptizatus erit, alter gentilis, sic ut Apostolus dixit, "Infidelis, si discedit, discedat," ergo cujus uxor est infidelis et gentilis et non potest converti, dimittatur.

CAPITULA DACHERIANA.⁵

Cujas uxor est infidelis et gentilis et non potest eam convertere, dimittat eam.

¹ Mansi, tom. xxiii. p. 513.

² Hartzheim, *Concilia Germaniae*, tom. ii. p. 403.

³ Haddan and Stubbs, iii. p. 200.

⁴ Wasserschleben reads *ejus*.

⁵ Wasserschleben, *Die Bussordnungen der abendländische Kirche*, p. 151.

HINCMAR.

De Divortio Lotharii et Tetbergae. Int. 21.¹

Fit et interdum, causa non contemnenda interveniente, quod erat illicitum licitum, cum legaliter initum conjugium dissolvi permittitur causa infidelitatis. Unde Paulus dicit: "Si quis frater uxorem habeat infidelem, et haec consentit habitare cum illo, non dimittat illam. Et si qua mulier habet virum infidelem, et hic consentit habitare cum illa, non relinquat virum," et post pauca: "Quod si infidelis discedit, discedat"; vel cum causa fornicationis uxor relinquitur, de qua item Paulus dicit: "His autem qui in matrimonio juncti sunt, praecipio non ego, sed Dominus, uxorem a viro non discedere; quod si discesserit, manere innuptam, et virum uxorem non dimittere." Quod aequa lance pensatur, ut, si dimiserit, in caelibatu permaneat. Quae disjunctio inter fideles post initum conjugium fieri non potest, nisi causa fornicationis, et amore continentiae.

Illud enim non debet imputari matrimonium quod extra Dei decretum factum est.

HUGO OF S. VICTOR.

De Sacramentis, lib. ii. par. 2, cap. 11.²

Quid est ergo, inquiunt, quod beatus Ambrosius dicit: non est ratum conjugium praeter Deum; et ideo non est peccatum dimissio propter Deum si aliis copuletur. Item beatus Gregorius dicit: Dimissio propter Deum non est peccatum si alii jungatur. Injuria enim Creatoris solvit jus matrimonii.

Lib. ii. par. 2, cap. 13.³

Si infidelis discedit, discedat. Non est subditus servituti frater in ejusmodi. Servituti subditus esset si vel traheretur invitus, vel teneretur non voluntarius. Nihil illi debet, sive discedat sive maneat; perdidit jus suum qui Creatori injuriam fecit. Si ergo discedit infidelis, discedat; nihil ad nos: non cogitur fidelis quasi aliquo debito obligatus, aut sequi discedentem, aut sustinere contemnentem. Non est subjectus servituti, liber est ut faciat quod vult, tantum in Domino, ducat uxorem si vir ille est; si femina est, nubat. Quam vult societatem eligat; non jam tenetur debito prioris societatis, cujus jus solutum est propter injuriam Creatoris. Quae videlicet

¹ Migne's Ed. tom. i. p. 732.² Migne, *Pat. Lat.* tom. clxxvi. p. 506.³ *Ibid.* p. 508.

injuria Creatoris non solum tunc excusat fidelem, quando ab infideli propter Deum dimissus alteri sine culpa conjungitur; sed tunc etiam excusat quando ipse fidelis magis societatem fidelem eligens infidelem cohabitare quidem, volentem, sed fidem recipere renuentem Christiana devotione detestatur. Sive enim discedat sive manere eligat infidelis, nihil debet illi qui fidelis factus est. Nemo illum cogere potest quin faciat quod velit. Injuria Creatoris solvit jus matrimonii.

GRATIAN.

Decretum (Concordantia Discordantium Canonum).

Secunda Pars. Causa xxviii. Quaest. I. c. 17.

Gratian :

Item illud Augustini : “ Non est ratum conjugium, quod sine Deo est,” non negat conjugium esse inter infideles. Conjugium enim aliud est legitimum et non ratum, aliud ratum et non legitimum, aliud legitimum et ratum. Legitimum conjugium est, quod legali institutione vel provinciae moribus contrahitur. Hoc inter infideles ratum non est, quia non est firmum et inviolabile conjugium eorum. Dato enim libello repudii licet eis discedere ab invicem, et aliis copulari lege fori, non lege poli, quam non secuntur. Inter fideles vero ratum conjugium est, quia conjugia, semel inita inter eos, ulterius solvi non possunt. Horum quedam sunt legitima, veluti cum uxor a parentibus traditur, a sponso dotatur, et a sacerdote benedicitur. Hec talia conjugia legitima et rata appellantur. Illorum vero conjugia, qui contemptis omnibus illis solemnitatibus solo affectu aliquam sibi in conjugem copulant, hujuscemodi conjugium non legitimum, sed ratum tantummodo esse creditur.

Secunda Pars. Causa xxviii. Quaest. II.

c. 1. *Non potest aliquis post baptismum alteram ducere vivente ea, quae ante baptismum sibi fuerit virgo copulata.*

Item ex concilio Meldensi. [c. I.]

Si quis habuerit uxorem virginem ante baptismum, vivente illa post baptismum alteram habere non potest. Crimina enim in baptismo solvuntur, non conjugia.

Gregorius autem contra testatur, dicens :

c. 2. *Licet fidei uxorem aliam ducere, quam Christianae fidei odio infidelis dimittit.*

“ Si infidelis discedit odio Christianae fidei, discedat. Non est enim frater aut soror subjectus servituti in hujusmodi.” Non est

enim peccatum dimisso propter Deum, si alii se copulaverit. Contumelia quippe creatoris solvit jus matrimonii circa eum, qui relinquitur. Infidelis autem discedens et in Deum peccat, et in matrimonium, nec est ei fides servanda conjugii, qui propterea discessit, ne audiret Christum esse Deum Christianorum conjugiorum.

Gratian :

His distinguendum est, aliud esse dimittere volentem cohabitare, atque aliud discedentem non sequi. Volentem enim cohabitare licet quidem dimittere, sed non ea vivente aliam superducere ; discedentem vero sequi non oportet, et ea vivente aliam ducere licet. Verum hoc non nisi de his intelligendum est, qui in infidelitate sibi copulati sunt. Ceterum si ad fidem uterque conversus est, vel si uterque fidelis matrimonio conjunctus est, et procedente tempore alter eorum a fide discesserit, et odio fidei conjugem dereliquerit, derelictus discedentem non comitabitur : non tamen illa vivente alteram ducere poterit, quia ratum conjugium fuerat inter eos, quod nullo modo solvi potest.

ROLAND.¹

Usquequaque verum est, quod matrimonium legitimum et consummatum inter fideles ratum, *i.e.* indissolubile consistit, apud infideles vero vel fidelem et infidelem dissolvi utique valet. Sed notandum, quod infideli volenti cohabitare et fidei praedicationem minime abhorrenti dimissa, aliam sibi ea viventi fidei copulare minime licet. Verum, si odio Christianae fidei discesserit, aut idola coluerit, sive ad maleficium virum fidelem compellere voluerit, illam dimittere et aliam assumere sanctorum consona sanctione permittitur.

PETER LOMBARD.

Sentences, iv. dist. 39, 7.²

Sed distinguendum est hic aliud esse dimittere volentem cohabitare, aliud dimitti propter Deum ab illo qui horret nomen Christi. Ibi lex benevolentiae non servatur, hic veritas custoditur. Et ideo cum liceat dimittere volentem cohabitare, non tamen ea vivente aliam ducere licet. Discedentem vero sequi non oportet : et ea vivente aliam ducere licet. Sed hoc non est intelligendum, nisi de his qui in infidelitate sibi copulati sunt. Sed si ad fidem uterque conversus est, vel si uterque fidelis matrimonio conjunctus est, et post alter eorum a fide discesserit, et odio fidei conjugem reliquerit ; dimissus discedentem non comitabitur, nec tamen illa

¹ Thaner, *Die Summa Magistri Rolandi*, 133 sq. quoted by Freisen, 812.

² Migne, *Pat. Lat.* tom. xcii. p. 936.

vivente alteram ducere poterit, quia inter eos fuerat ratum conjugium, quod non potest dissolvi.

BERNARD OF PAVIA.¹

Si autem ab initio infideles erant, cum matrimonium contraxerunt, et unus conversus est, reliqua in infidelitate remanente, refert, infidelis consentiat habitare cum fidei vel non. Nam, etsi consentiat, potest tamen fidelis eam relinquere, sed non ea vivente aliud matrimonium contrahere; similiter et mulier fidelis de viro infidei, ut C. 28, q. 1, c. 9, in f. Si vero infidelis non consentiat habitare cum fidei, tunc licet fidei aliud matrimonium contrahere, ut C. 28, q. 2, c. 2.

Quodsi infidelis, quae prius non consentiebat cohabitare, venit ad fidem et virum suum repetit, distinguendum puto, an vir priusquam ipsa converteretur, aliam accepit uxorem, in quo casu non ei redderetur, sed cum secunda maneret; si vero prius ipsa conversa est, quam iste aliam acciperet, puto ipsum sibi esse reddendum; cessante enim causa dissidii debuit cessare dissidium. Et videtur tam doctori meo Hugoni, quam mihi, quod cogendus sit eam recipere, licet in C. 28, q. 2, c. 2, dicatur, quod contumelia Creatoris solvit jus matrimonii erga eum, qui relinquitur, unde videtur, quod statim ab ea fit liber, sed intelligendum est, quod solvit ipsa in infidelitate remanente. Quaeritur autem si ante aliam accepit, quam ista converteretur, an liceat isti cum alio post conversionem matrimonium contrahere; et quod videtur ex illo verbo praedicto scilicet quod ait: *erga eum qui relinquitur*: ex hoc, inquam, verbo colligi videtur, quod erga eum non sit solutum. Sed melius est dicere jus matrimonii erga utrumque solutum esse; non enim illa est uxor sine viro, et propterea credo, sibi licere matrimonium contrahere; ideo autem non dixit: *erga utrumque*, quia de infidei judicare non debuit. Non est autem praedicta regula servanda in his, qui fideles conjuncti sunt et postea unus apostatur nec consentit habitare cum fidei: cum enim matrimonium initiatum, consummatum et ratum fuerit inter eos, apparet quod nulla causa interveniente potest aliam ducere.

ROBERT OF MALMSBURY.²

Inter infideles autem est matrimonium, sed non ratum. Unde, si tu conversus es, et illa non vult converti, sed tamen commanere, non

¹ Laspeyres, *Bernardi Papiensis Faventini episcopi summa decretalium*, p. 291 sq. quoted by Freisen, 817.

Schulte, *Roberti Malmesburiensis summa de matrimonio et usuris*, p. 17, quoted by Freisen, 820.

potes, ea sic vivente, aliam ducere. Si autem cedit in odium Christianitatis, ducas aliam, si vis, et ideo non est ratum matrimonium infidelium. Hoc autem intelligendum est de illis, qui contraxerant in infidelitate; quia si fideles contraxerant et alter apostatat et tamen non vult manere nisi blasphemans vel forte discedere vult, non potest remanens fidelis cum alia contrahere vivente prima, quia ratum fuit matrimonium. In solis Judaeis aliter est, quia quidquid sit, neuter reliquum potest retinere, nisi ambo convertantur. Solutum est ergo matrimonium, licet quidam dicant quod non, et male, ut videtur, quia sic cogeretur quis invitus continere.

TANCRED.¹

Si vero conjuges sunt infideles, puta Judaei vel Sarraceni, et alter convertatur ad fidem, alter remanet in Judaismo, vel in gentilitatis errore, si infidelis non vult cohabitare fidei, vel si vult cohabitare, non tamen sine injuria et blasphemia nominis Christi, vel, ut eum retrahat ad infidelitatem vel ad aliud mortale peccatum, in istis tribus casibus contumelia Creatoris solvit jus matrimonii erga fidelem et potest fidelis licite contrahere.

INNOCENT III.

Decretales Gregorii ix. lib. iv. 19. De Divortiis, cap. 7. Quanto.

Nos igitur consultationi tuae de communi fratrum nostrorum consilio respondentes, distinguimus, licet quidam praedecessor noster sensisse aliter videatur, an ex duobus infidelibus alter ad fidem catholicam convertatur, vel ex duobus fidelibus alter labatur in haeresim, vel decidat in gentilitatis errorem. Si enim alter infidelium conjugum ad fidem catholicam convertatur, altero vel nullo modo, vel saltem non sine blasphemia divini nominis, vel ut eum pertrahat ad mortale peccatum, ei cohabitare volente: qui relinquitur, ad secunda, si voluerit, vota transibit. Et in hoc casu intelligimus quod ait apostolus: "Si infidelis discedit, discedat. Frater enim vel soror non est servituti subjectus in hujusmodi," et canonem etiam, in quo dicitur, quod "contumelia creatoris solvit jus matrimonii circa eum qui relinquitur." Si vero alter fidelium conjugum vel labatur in haeresim, vel transeat ad gentilitatis errorem, non credimus, quod in hoc casu is, qui relinquitur, vivente altero possit ad secundas nuptias convolare, licet in hoc casu major appareat contumelia creatoris.

¹ Wunderlich, *Tancredi summa de matrimonio*, p. 49, quoted by Freisen, 822.

Nam etsi matrimonium verum *quidem* inter infideles existat, non tamen est ratum. Inter fideles autem verum *quidem* et ratum existit, quia sacramentum fidei, quod semel est admissum, nunquam admittitur; sed ratum efficit conjugii sacramentum, ut ipsum in conjugibus illo durante perduret. Nec obstat, quod a quibusdam forsitan obijcitur, quod fidelis relictus non debeat jure suo sine culpa privari, quum in multis casibus hoc contingat, ut si alter conjugum incidatur. Per hanc autem responsionem quorundam malitiae obviatur, qui in odium conjugum, vel quando sibi invicem displicerent, si eas possent in tali casu dimittere, simularent haeresim, ut ab ipsa nubentibus conjugibus resilirent. Per hanc ipsam responsionem illa solvitur quaestio qua quaeritur, utrum ad eum, qui [*vel*] ab haeresi vel infidelitate revertitur, qui permansit in fide, redire cogatur. [Dat. Lat. Kal. Maii. 1199.]

Cap. 8. Gaudemus.

Qui autem secundum ritum suum legitimam repudiavit uxorem quum tale repudium veritas in evangelio reprobaverit, nunquam ea vivente licite poterit aliam etiam ad fidem Christi conversus habere, nisi post conversionem ipsius illa renuat cohabitare cum ipso, aut etiamsi consentiat, non tamen absque contumelia creatoris vel ut eum pertrahat ad mortale peccatum. In quo casu restitutionem petenti, quamvis de injusta spoliatione constaret, restitutio negaretur, quia secundum Apostolum frater aut soror non est in hujusmodi subjectus servituti. Quodsi conversum ad fidem et illa conversa sequetur, antequam propter causas praedictas legitimam ille ducat uxorem, eam recipere compelletur.

S. THOMAS AQUINAS.

Summae tertiae partis suppl. qu. 59, art. 5.

Distinguendum est, quia si infidelis vult cohabitare sine contumelia Creatoris, id est, sine hoc quod ad infidelitatem inducat, potest fidelis libere discedere, sed discedens non potest alteri nubere; si autem infidelis non vult cohabitare sine contumelia Creatoris, in verba blasphemiae prorumpens, et nomen Christi audire nolens, tunc, si ad infidelitatem pertrahere nitatur, vir fidelis discedens potest alteri per matrimonium copulari.

Solvitur (matrimonium prius) per matrimonium sequens, ad quod pervenire non posset vir fidelis, nisi solutus a servitute uxoris suae per culpam ejusdem.

Ad primum ergo dicendum, quod matrimonium infidelium imperfectum est . . . ; sed matrimonium fidelium est perfectum, et ita est firmitus. Semper autem firmitus vinculum solvit minus firmum, si sit ei contrarium; et ideo matrimonium quod post in fide contrahitur, solvit matrimonium quod prius in infidelitate contractum fuerat. Unde matrimonium infidelium non est omnino firmum et ratum, sed ratificatur postmodum per fidem Christi.

S. BONAVENTURE.

Commentaries on the Sentences. On book iv. dist. 39, art. 2, qu. 1.¹

Concedo igitur quod solutionem matrimonii contracti in infidelitate faciunt: primum est ipsius imbecillitas, secundum est cultus disparitas, tertium Creatoris vel matrimonii injuria. Primum reddit possibile ad solutionem, secundum disponit, tertium dissolvit. Matrimonii imbecillitas est ratione signationis imperfectae, quam habet apud infideles et ratione defectus baptismi. Unde dicitur quod illud matrimonium est legitimum sed non ratum, quia, ut dicit Innocentius, sacramentum fidei, id est, baptismi, quod semel admissum est, ratum efficit sacramentum conjugii, ex parte scilicet suscipientis est intelligendum.

PAUL III.

Constitution *Altitudo*.

*Venerabilibus fratribus universis Episcopis Occidentalis et meridionalis Indiae Salutem et Apostolicam Benedictionem.*²

Super eorum vero matrimonium hoc observandum decernimus, ut qui anti conversionem plures juxta eorum mores habebant uxores, et non recordantur, quam primo acceperint, conversi ad Fidem, unam ex illis accipiant, quam voluerint, et cum ea Matrimonium contrahant per verba de praesenti, ut moris est; qui vero recordantur, quam primo acceperint, aliis dimissis, eam retineant.

PIUS V.

Constitution *Romani Pontificis*, 2 Aug. 1571, A.D.³

Cum itaque sicut accepimus Indis in sua infidelitate manentibus plures permittantur uxores, quas ipsi etiam levissimis de causis repudiant, hinc factum est quod recipientibus Baptismum per-

¹ *Opera Omnia*, Rome, 1596, tom. vi. p. 500.

Bullarium sacrae congregationis de propaganda fide, App. i. p. 25.

Bullarium pontificium s. cong. de prop. fide, App. tom. i. p. 45, Romae, 1841.

missum sit permanere cum ea uxore quae simul cum marito baptizata existit, et quia saepenumero contingit illam non esse primam conjugem, unde tam Ministri quam Episcopi gravissimis scrupulis torquentur, existimantes illud non esse verum matrimonium, sed quia durissimum esset separare eos ab uxoribus cum quibus ipsi Indi baptismum susceperunt, maxime quia difficillimum foret primam conjugem reperire, ideo nos statui dictorum Indorum paterno affectu benigne consulere, ac ipsos Episcopos et Ministros ab huiusmodi scrupulis eximere volentes, motu proprio et ex certa scientia nostra ac Apostolicae Potestatis plenitudine, ut Indi sic ut praemittitur baptizati et in futurum baptizandi cum uxore quae cum ipsis baptizata fuerit et baptizabitur remanere habeant tanquam cum legitima uxore, aliis dimissis, Apostolica auctoritate tenore praesentium declaramus, matrimoniumque huiusmodi inter eos legitime consistere.

GREGORY XIII.

Constitution Populis ac Nationibus, 25 Jan. 1585.¹

Populis ac Nationibus nuper ex gentilitatis errore ad fidem Catholicam conversis expedit indulgere circa libertatem contrahendi matrimonia, ne homines continentiae servandae minime assueti propterea minus libenter in fide persistent et alios illorum exemplo ab ejus perceptione deterreant; quoniam igitur saepe contingit multos utriusque sed praecipue virilis sexus infideles post contracta gentili ritu matrimonia ex Ancola, Ethiopia, Brasilia, et aliis Indicis Regionibus ab hostibus captos a Patriis finibus et propriis conjugibus in remotissimas Regiones exterminari, adeo ut tam ipsi, captivique qui in Patria remanent, si postea ad fidem convertantur, conjuges infideles tam longo locorum intervallo disjunctos, non sine contumelia Creatoris secum cohabitare velint monere, ut par est, nequeant, vel quia interdum ad hostiles et barbaras Provincias ne Nuntiis quidem accessus pateat, vel quia ignorent prorsus in quas Regiones fuerint transvecti, vel quia ipsa itineris longitudo magnam afferat difficultatem. Ideirco Nos attendentes huiusmodi connubia inter infideles contracta vera quidem, non tamen adeo rata censi, ut necessitate suadente dissolvi non possint, talium gentium infirmitatem paterna pietate miserati, universis et singulis dictorum locorum ordinariis et Parochis et Presbyteris Societatis Jesu ad Confessiones audiendas ab ejusdem Societatis Superioribus approbatis, et ad dictas Regiones pro tempore missis, vel in illis admissis, plenam Auctoritate Apostolica tenore

Bullarium sac. cong. de prop. fide, App. i. p. 103, Romae, 1841.

praesentium concedimus facultatem dispensandi cum quibuscumque utriusque sexus Christifidelibus incolis dictarum Regionum, et serius ad fidem conversis, qui ante baptismum susceptum matrimonium contraxerant, ut eorum quilibet, superstite conjuge infideli, et ejus consensu minime requisito, aut responso non expectato, matrimonia cum quovis fidei, alterius etiam ritus contrahere, et in facie Ecclesiae solemnizare, et in eis postea carnali copula consummatis, quoad vixerint remanere licite valeant, dummodo constet et summarie et extrajudicialiter conjugem ut praefertur absentem moneri legitime non posse, aut monitum intra tempus in eadem monitione praefixum suam voluntatem non significasse. Quae quidem matrimonia, etiamsi postea innotuerit conjuges priores Infideles suam voluntatem juste impeditos declarare non potuisse, et ad fidem etiam tempore contracti secundi matrimonii conversos fuisse, nihilominus rescindi nunquam debere, sed valida et firma prolemque inde suscipiendam legitimam fore decernimus.

CONCILIUM LIMANUM.

A Sixto V. probatum.¹

Si infidelis spem suae conversionis ostendat, christianus nullo modo ad alias nuptias transeat, quemadmodum sacris canonibus est definitum; sed conjugis lucrum in Christo expectet; si vero differat conversionem suam, neque tamen baptizatae conjugi perniciosus existat, avertendo a fide, aut ad peccatum mortale pertrahendo (caeterum cum id fit, sacri canones eos necessario separandos esse volunt, et christiano novi conjugii potestatem tribuunt) tunc et expectandum adhuc per semestre tempus, et assidue interim de sua conversione admonendum. Transacto sex mensium spatio, res ad episcopum deferatur, qui perspecta bene causa infidelis, declarat fidei copiam esse aliud matrimonium ineundi, propter fidei aut charitatis scandalum quod patitur; quod si nullum esse periculum in cohabitatione viderit, jubeat expectare infidelem, aut etiam consulat, si prodesse intelligat.

SACRA CONGREGATIO CONCILII.

Die 23 Jan. an. 1603.²

Sacra congregatio censuit ita respondendum, minime posse praedictos ad veram fidem conversos accipere alias fideles uxores, nisi prius constiterit utrum primae voluerint cum eis permanere vel

¹ Quoted by Perrone, *De Matrimonio*, tom. ii. p. 324.

² *Lib. x. Decret.* p. 55, quoted by Perrone, *De Matrimonio*, ii. 313.

non. Quod si noluerint cohabitare, vel si voluerint, non tamen absque contumelia Creatoris, vel ut conversos ad mortale peccatum pertrahant, tunc posse alias fideles accipere uxores. Si cohabitare absque Creatoris contumelia velint, et absque eo quod conversos ad mortale peccatum pertrahant, quamvis veram agnoscere fidem noluerint, non posse conversos alias fideles accipere uxores. Non sufficere ea, quae proponuntur, nempe loci distantiam, difficultatem, ac praesumptionem, cum constare debeat de voluntate ipsarum uxorum infidelium.

CLEMENT IX.

To the Bishop of Heliopolis, A.D. 1669 (23 Jan).¹

Dispensandi super impedimento disparitatis cultus, gravibus tamen ex causis in quibus dispensandum erit, et in locis tantum ubi sunt plures infideles quam christiani, ita ut in eo matrimonio postmodum, quatenus absque Creatoris contumelia fieri possit, contrahentes remanere libere et licite valeant, prolesque exinde suscipiendas legitimas decernendi, super quibus eorundem vicariorum apostolicorum conscientia oneratur, et praedictae dispensationes gratis concedantur.

BENEDICT XIV.²

Certum est infidelium conjugium, ex privilegio in Fidei favorem a Christo Domino concessio, et per Apostolum Paulum 1 Cor. vii. promulgato, dissolvi, cum conjugum alter Christianam Fidem amplectitur, renuente altero, in sua infidelitate obdurato, cohabitare cum converso, aut cohabitare quidem volente, sed non sine contumelia Creatoris, hoc est, non sine periculo subversionis conjugis fidelis, vel non sine execratione sanctissimi nominis Christi, et christianae religionis despicientia. Ex hoc vero fit integrum non esse conjugii converso transire ad alia vota, priusquam infidelis interpellatus, aut absolute recusaverit cum eo cohabitare, aut animum sibi esse ostenderit cum illo quidem cohabitandi, sed non sine Creatoris contumelia.

At quandoque evenit, conjugem infidelem in longinquas abiisse regiones, aut ita latitare, ut interpellari nequeat, et tunc dubitatur, an, interpellatione omissa, fas sit converso alias inire nuptias.

¹ Quoted by Perrone, *De Matrimonio*, tom. ii. p. 334, as "*Ex organo congreg. de prop. fide.*"

² *De Synodo Lioecessana*, lib. i. c. 4, § 3. Moguntiae, 1840, tom. i p. 420.

Nos ipsi, ad Petri Cathedram evecti, facultatem concessimus Apostolico Nuntio, Venetiis commoranti, ut in simili rerum eventu possit ab ejusdem interpellationis onere relevare conjuges conversos, existentes in loco pio Catechumenorum ejusdem civitatis Venetiarum: quod habetur *in Constit. 3 nostri Bullarii, tom. 1.*

CONFÉRENCES D'ANGERS.

Sur Le Mariage, p. 333.

(Arguments in the case of Borach Levi.)

On convint que les Canonistes et les Theologiens, depuis plusieurs siècles, avaient entendu ce texte célèbre d'une dissolution réelle du mariage; mais l'uniformité de leurs sentiments ne parait d'aucune consideration; elle n'est pas capable d'introduire une exception, quelque plausible qu'elle puisse être, à une indissolubilité fondée sur le Droit divin même. On prétendit que sans autre examen, ils s'en étaient tenus à une Décrétale d'Innocent III.; que ce Pape avait été lui-même trompé par Gratien; que ce compilateur avait sans discernement copié une interpretation de S. Paul, qu'il avait cru trouver dans les ouvrages de S. Gregoire le Grand; que cette autorité lui en avait imposé; que S. Gregoire n'a rien enseigné de semblable; que ce que cite Gratien, est à la verité tiré d'un commentaire de S. Paul, autrefois attribué à S. Ambroise; que depuis on avait reconnu qu'il n'était pas du saint docteur; et qu'en passant par tous ces degrés, l'autorité d'Innocent III. avait ainsi entraîné toute l'école. On en conclut que quelque unanime qu'on supposât le sentiment des Scholastiques, avec des appuis si fragiles, il ne pouvait l'emporter sur des preuves du sentiment contraire, qui sont d'une toute autre force, et auxquelles on ne peut faire les mêmes reproches.

SACRA CONGREGATIO SANCTI OFFICII.

*Casus insequens ex coccinensi missione an. 1759, die 1 Aug., sub Clemente XIII.*¹

Saepe contingit ut ex duobus infidelibus alter convertatur ad fidem, alter converti quidem nolit, consentiat tamen cohabitare cum fidei sine contumelia Creatoris. . . . Quare fidelis infidelem non dimittit, sed cohabitare pergunt ut conjuges, idque ad aliquos etiam annos: at postea infidelis mutata voluntate, non solum converti non vult, sed tentat fidelem, vel discedit, imo ad alias nuptias transit.

¹ Quoted by Perrone, *De Matrimonio*, tom. ii. p. 322.

Quaeritur 1: An in hoc casu possit etiam fidelis derelictus discedere, et ad alias nuptias transire?

Resp. ad 1: In casu de quo agitur, *affirmative*.

Quaeritur 2: An hoc privilegium solum locum habeat, quando infidelis discedit odio fidei; an etiam quando discedit propter discordias, vel aliam causam a fide diversam?

Resp. ad 2: Cum militet ex parte conjugis conversi favor fidei, eo potest uti, quacumque ex causa, dummodo justa sit, nimirum non dederit justam ac rationabile motivum alteri conjugi discedendi.

Quaeritur 3: Num possit fidelis transire ad alias nuptias, quando infidelis quacumque de causa ab eo discessit, nec sciri possit, vivat adhuc necne?

Resp. ad 3: Remittendam esse interpellationem, qua intimetur conjugi infideli, an velit converti, a qua interpellatione apostolica sedes, justis de causis, dispensat.

Quaeritur 4: An fidelis, qui ex dispensatione valide contraxit matrimonium cum infideli transire possit ad alias nuptias, si infidelis discedat, vel cohabitare nolit, vel eam pertrahat ad mortale peccatum?

Resp. ad 4: Si fidelis, praevia dispensatione, contraxit matrimonium cum infideli, censetur illud contraxisse cum explicita conditione: dummodo nimirum infidelis secum cohabitare velit absque contumelia Creatoris: quare si infidelis non servet supradictam conditionem, adhibenda sunt juris remedia, ad hoc, ut eam servet; alias separari debent quoad torum et cohabitationem, non tamen quoad vinculum; quocirca in casu de quo agitur, conjuge infideli superstite, non poterit ad alia vota transire.

Quaeritur 5: An aliquo et quanto tempore possit fidelis post conversionem cohabitare cum infideli, quin privetur potestate transeundi ad alias nuptias?

Resp. ad 5: Conversus ad fidem, in ipso conversionis momento non intelligitur solutus a vinculo matrimonii cum infideli adhuc superstite contracti, sed tunc acquirit solummodo jus transeundi ad alias nuptias cum conjuge tamen fidei, idque si conjux infidelis renuat post interpellationem converti. Ceterum tunc conjugii vinculum dissolvitur, quando conjux conversus transit cum effectu ad alias nuptias. Si gentilis conversus ante suspensionem baptismi habebit plures uxores, et prima recuset amplecti fidem, tunc legitime potest quamlibet ex illis retinere, dummodo fidelis fiat. Sed in hoc casu contrahentes mutuum consensum coram parocho et testibus renovare debent.

SYNODUS SUTCHUENSIS, A.D. 1803.

(Acta probata a s. cong. de prop. fide.)¹

Noverint missionarii, quibus concessa est facultas dispensandi ab interpellatione, ea non uti nisi ad normam Brevis Gregorii XIII.; scilicet, ut non dispensetur, nisi quando fidelis conjugem infidelem absentem, an sine contumelia Creatoris secum habitare velit, ut par est, monere nequit, vel quia interdum ad hostiles et barbaras provincias ne nunciis quidem accessus pateat; vel quia prorsus ignoretur in quas regiones fuerit transactus; vel quia itineris longitudo magnam affert difficultatem; et praeterea rarissime et in casu urgentis necessitatis. Extra hos casus omnino fieri debet interpellatio, etiamsi inutilis aut periculosa videatur, si fidelis velit ad alias nuptias transire; nec ab ea dispensari potest sive timeatur, ne infidelis interpellatus, sicut prima vice uxorem vendidit eandem recuperatam iterum vendat; sive praesumatur cum fundamento, vel ex dissensionibus conjugum in praecedenti cohabitatione, vel ex alia quavis circumstantia, partem infidelem nolle redire. Quod si periculum adsit, ne facta interpellatione, exinde oriatur molestia seu persecutio contra christianos, hujusmodi casus deferatur ad vicarium apostolicum, ut s. sedes consulatur, prout responsum est in congregatione s. officii an. 1759. De duobus porro dumtaxat fieri debet interpellatio nempe, 1. num pars infidelis velit converti; 2. num saltem velit cohabitare absque contumelia Creatoris.

Advertant iidem missionarii, fidelem cum quo dispensatur, non posse novum matrimonium inire, nisi cum fidei baptizata, minime vero catechumena. Praeterea adhuc diligenter observent, quod in unoquoque illorum casuum in quibus necessarium judicabunt dispensare ab interpellatione, non sufficiat, ut omnino sint persuasi de impossibilitate, aut difficultate illam exequendi, sed oportebit, ut faciant processum summarium et scriptum, quo pro omni tempore futuro appareat, vel ex eo, quod interpellatus non respondet, aut quia ignoratur ubi sit; aut quia dedit argumentum reipsa aperti sui dissensus; aut quid tandem in tanta est distantia, ut interpellatio ad illum pervenire nequeat, aut saltem res est multum difficilis; iste enim praevius processus summarius nascitur ex litteris et spiritu Brevis gregoriani. Quamvis in folio facultatum, quae missionariis conceduntur, sequens facultas legatur;

Dispensandi cum gentilibus et infidelibus plures uxores habentibus,

¹ Quoted by Perrone, *De Matrimonio*, tom. ii. p. 318.

ut post conversionem et baptismum, quam ex illis maluerint, si etiam illa fidelis fiat, retinere possint, nisi prima voluerit converti; nihilominus eorum conscientia oneratur, qui uti non debent tali facultate, nisi ad normam supradicti Brevis gregoriani, scilicet, ut non dispensetur ab interpellatione primae uxoris, nisi in casibus in Brevis expressis: sufficit autem, ut interpelletur, si velit converti.

SACRED CONGREGATION OF THE PROPAGANDA, A.D. 1816 (5 Meh.).

Pro vicariatu apostolico Tunchini occidentalis.¹

1. Dubium excitatum est: utrum ad effectum matrimonii dissolvendi juxta privilegium in favorem fidei a Christo Domino concessum, et ab Apostolo promulgatum, interpellatio partis in infidelitate permanentis sit de jure divino, atque adeo necessaria, ut ea neglecta, nullus plane habeatur matrimonii dissolvendi locus? An solum pertineat ad formam judicalem, nec requiratur, nisi ut dissolutio *licite* fiat, praesertim cum aliunde constet judiciis moraliter certis, alterum conjugum nec fidem amplecti nec sine contumelia Creatoris velle cohabitare?

Cui dubio respondit sac. congregatio, non esse locum dissolutioni matrimonii in infidelitate contracti, in casu de quo agitur, nisi interpellatione praemissa, aut nisi obtenta legitimis ex causis, super interpellatione apostolica dispensatione.

2. Num sola de religione amplectenda sufficiat interrogatio: *utrum scilicet pars in infidelitate remanens velit converti necne?* Quod Thomae Sanchez auctoritate freti existimant aliqui ex missionariis; an potius interpellatio: *Utrum saltem pars in infidelitate perseverans absque Creatoris contumelia cohabitare consentiat*, sit quoque essentialis et absolute requisita, ita ut illa praetermissa, non solum *non licite*, sed etiam *non valide* matrimonium dissolvi queat?

Resp. Interpellandum esse conjugem infidelem non solum an converti velit, sed etiam casu, quo nolit converti, an velit cum conjugem fidelem cohabitare sine contumelia Creatoris juxta dispositionem Innocentii III. cap. *Quanto. De divortiis*.

3. Utrum sollemnis uxoris expulsio a marito facta, videlicet dando libellum repudii coram pagi primoribus juxta leges regni, possit interpellationis locum tenere, et pro ea reputari, cum certissime constet de istius mariti voluntate, illum nempe praefatam mulierem nullo modo in posterum uxorem velle habere? An potius, nulla

¹ Quoted by Perrone, *De Matrimonio*, tom. ii. p. 324.

repudii habita ratione, in iis etiam circumstantiis duplex in jure praescripta ad validitatem matrimonii requiratur interpellatio?

Resp. Faciendam esse interpellationem, etiam in casu de quo agitur, si fieri potest: aut recurrendum esse ad sedem apostolicam pro obtinenda dispensatione.

4. Quomodo se gerere debeat missionarius erga mulierem infidelem, absque ulla adulterii causa a suo marito etiam infideli repudiatam, qui aliam duxit, cum illa postulat baptizari, et est suspicio, an sit animo parata ad revertendum ad suum maritum, si forte postea revocet, et sine contumelia Creatoris cohabitare consentiat? Debetne illam de hac re prius interrogare, atque interea baptismum deferre, donec melius sit disposita, etiam cum periculo moriendi absque baptismate? Quid autem si consentiat, sed dumtaxat cum hac conditione, quando nimirum expulsa fuerit concubina?

Resp. Nihil obstande quominus mulieri, de qua in casu modo aliunde sit sufficienter instructa, baptisma conferatur.

5. Cum adulterium causam praebeat conjugibus infidelibus, sicut et christianis, divortium perpetuum celebrandi, ita ut parti innocenti omnino sit integrum, cum sacro fonte abluta fuerit, aut seculo nuncium remittere, aut in statu viduitatis vitam transigere, licet pars altera reconciliari velit, et sine contumelia Creatoris cohabitare?

Resp. Conjugem ad fidem conversam et baptizatam posse facere divortium, quoad torum, a conjugee infideli ob adulterium ab eo commissum, quamvis iste veniam petat, et velit cohabitare sine contumelia Creatoris.

BENEDICT XIV.

Singulari nobis (1749 A.D.).

Canones a Gratiano collecti in causa 28 q. 1, revera fidelium cum infidelibus matrimonia prohibent, non tamen ita, ut eadem faciant irrita; Et quamquam facerent, tamen, cum canones illi a conciliis provincialibus conditi fuerint, tantam vim obtinere minime possunt, ut iis universalis ecclesia obligetur.

Omnes consentiunt ob cultus disparitatem irrita matrimonia esse, non quidem jure sacrorum canonum, sed generali ecclesiae more, qui pluribus adhuc saeculis viget ac vim legis obtinet.

The five centuries which follow Justinian are not in the West very fruitful of indications on the subject of the re-marriage of converts. Such authorities as there are seem to

divide themselves into three main currents; viz., (1) the practice of the Church of Spain, (2) the teaching of Central Europe, and (3) the Eastern teaching of Theodore, introduced into England by the Penitential of the great Archbishop.

(1) The practice of the Church of Spain may first be **Spain.** noticed. In 633 A.D. was held the 4th Council of Toledo, the 75 Canons of which are subscribed by 69 bishops or bishops' representatives. The 63rd of these Canons lays down that a converted Jewess must leave her Jewish husband unless he too consents to become a Christian, a decision which appears to be in direct contradiction to the instruction of S. Paul.¹ It is, in fact, the extreme point reached by the swing of the pendulum in one direction, as the rigorism of the Church of S. Augustine is the extreme point reached in the other direction. In each case the explanation is to be sought in the historical environment. S. Augustine and the Church of his day, at least in Africa, had to control the laxity of the catechumen who would not be baptized; and therefore, as it would seem, decided that even one baptized might not remarry during the lifetime of the partner of his pre-Christian days. The churches of the Visigothic kingdoms of Spain were facing in an entirely different direction. They were not concerned with controlling the catechumen, nor on the other hand do they seem to have been much affected by concern for the converted wife, whose faith might be in danger if she clung to the husband of her youth. Rather must it be said that the churches of Spain had already set out upon that lurid career of repression, which found a virtue in making the life of an unbeliever in nothing worth the living till he should find his way into the Christian fold. A perusal of the Canons of the various Councils of Toledo will make this sufficiently clear. We are in the presence of a Church which begins to be conscious of a giant's strength, and has no thought above the using of it as a giant. It may be that the endangered Christian wife had her share in the forethought of the Spanish bishops, but it is the malignant Jewish husband who is rather the object of their efforts, and who must be hounded for his soul's sake by every inducement

¹ Mansi, tom. x. p. 634.

of natural affection to forsake the error of his ways. "Jews who have Christian women in marriage are to be admonished by the bishop of that *civitas* that if they desire to abide with them they must become Christians. But if on admonition they decline, they are to be separated (from their wives); because an unbeliever cannot remain in the wedlock of her who has now been translated into the Christian faith."

It is not stated whether the woman so separated would be held free to marry again; but this appears to follow. Marriage with a Jew was a simple horror; in no case might it be suffered to abide. A theology which thus ruthlessly severed the prior bond would hardly lay stress upon its indissoluble character. In this connexion may be noticed a decision of the 17th Council of Toledo, which was held in 694 A.D., or 61 years after the Council just noticed. It does not directly bear upon our subject, but is of great interest as shewing the unflinching character of the repressive spirit. At seven years of age boys and girls alike were to be torn from their Jewish parents and given over to be brought up by "very faithful Christians."¹ These "very faithful Christians" were in the bringing up to contrive to marry the young men to Christian women, *i.e.*, women of Christian families, and the young women similarly to Christian men.

It seems probable that the principle of the unlawfulness of any union between believers and unbelievers, however sanctioned by the past, continued to be the guiding principle of the Spanish Church in this matter for many centuries. There is, so far as appears, no indication of a change of front, till the general adoption of the Decretum of Gratian practically brought all Western Christendom under the same system of Canon Law. As late indeed as the Council of Tarragona in 1239 A.D., or more than six centuries after the 4th Council of Toledo, we come across an enactment hardly different in spirit from the Canon of that Council, though now the Spanish Church is confronted not only with the Jew but with the Musalman. Jews and "Saracens" are to be distinguished from Christians by their attire, and they are not to retain

¹ Mansi, tom. xii. p. 102.

Christian women in their households. Any Christian women remaining in such households after the prohibition so given are to be debarred from Christian sepulture. No mention is here made of wives, but neither is any exception made in their favour.¹

The Spanish Church thus appears to have simply declined to recognise that the state of marriage was possible as between a believer and an unbeliever in any case or under any circumstances.

(2) In Italy and Germany the view of S. Augustine as to the indissolubility of marriage contracted before baptism seems to have been followed without much controversy. Gratian refers to the "concilium Meldense," as having laid down that a marriage contracted before baptism could not be dissolved. "If any person has had a virgin to wife before his baptism, so long as she lives he may not have another after his baptism. For offences, not marriages, are done away in baptism." The Council of Meaux, held in A.D. 845, has however no such Canon, and Gratian has probably taken his quotation with slight alterations from the records of the Council of Tribur, or else from other records not now known. In the records of the Council of Tribur a Canon, nearly the same as that quoted by Gratian, is given as being the pronouncement of one of the Roman Synods. "The Roman Synod says that a wife who was held before baptism is not to be divorced after baptism. In baptism offences, but not legitimate marriages, are done away."² The Council of Tribur itself was clearly of the same opinion. It was held at the village of Tribur, near Maintz, in A.D. 895, and consisted of 22 German bishops. The Canon of this Council in which the quotation referred to occurs is concerned with the abuse which appears to have arisen in the cases of persons married in one state of Christian Europe, and afterwards, when residing in another state, claiming to be free from the first tie on the ground of the diversity of the local laws. The Council, in forbidding all divorces on such grounds, bases on the recognised prohibition

¹ Mansi, tom. xxiii. p. 513.

² Hartzheim, *Concilia Germaniae*, tom. ii. p. 403.

of divorce even in the case of converts. "For when one in baptism migrates from one life to another (*de vita in vitam*), and yet does not change his lawful wife, how may he change her who does not change his life, but merely passes over from one people to another?" It need hardly be said that thus to base upon the indissolubility of pre-Christian marriage is as certain an indication of the acceptance of the principle as any independent decision could possibly be.

England (3) In England the provisions of the Penitential of Theodore were based on lines which were neither those of the Spanish Church nor those of the Churches of Central Europe. They are, as has been already noticed, a heritage from the East. On the present question the Penitential rules: "If any man shall, while a Gentile (non-Christian), have divorced a Gentile wife, it shall be competent to them (husband and wife), after their baptism, either to hold or not to hold her." "Similarly, if one of these shall be baptized, the other remaining a Gentile, just as the Apostle said, 'If the unbelieving depart, let him depart,' so whosoever's wife is an unbeliever and a Gentile, and cannot be converted, let her be divorced."¹ These two rulings occur together, the 18th following immediately upon the 17th, and being connected with it by grammatical construction (*eis, eorum*). It will be seen, therefore, that it is no easy matter to determine with any exactness the scope of cap. 18. Cap. 17 appears to refer only to those husbands and wives who, having effected a divorce before baptism, might, upon baptism, exercise their judgment as to renewing their connexion as Christian marriage. It appears to be contemplated that they would be baptized at the same time, and that either husband or wife might then elect not to renew the union. When, however, we come to cap. 18, which goes on to speak of *them* in a construction which can only refer to c. 17, are we to understand that the Penitential is still treating of persons who had been divorced before the baptism of one of them, or to all cases of the conversion of one partner in a marriage? In the first case it will mean that persons who are already divorced before baptism, and whose

¹ Haddan and Stubbs, v. iii. p. 200.

partners have not followed them into Christianity, ought not, upon their baptism, to go back upon the divorce. In the second case it will have the full unbendingness of the Spanish practice, "Be converted or divorced." If this teaching be compared with the teaching and usage of the East, it will be remembered that while the Council *in Trullo* (A.D. 692) permitted the married convert to continue his union with the unbelieving partner, the practice of the Church admitted the unbelief of the partner to be itself a sufficient ground of divorce if the Christian partner cared to claim it.

Besides the three lines of teaching and practice here indicated, we may notice the utterances of Hincmar, Archbishop of Rheims (A.D. 806-882). He quotes S. Paul's concession as permitting separation of life, but it does not clearly appear whether he considers remarriage to be open to the believing partner. As, however, he holds that "that ought not to be accounted marriage which is effected outside the decree of God," by which he intends the marriages of non-Christians, it seems to follow that he would admit the remarriage of a convert.¹

The most fruitful of all periods of Christian history in attempts to probe and settle the questions surrounding the conversion of married persons is what may be termed, by excellence, the period of the Canonists, which finds its central point in the Decretum of Gratian. First in this period may be noticed Hugo of S. Victor (theologian, not Canonist, who died A.D. 1141); next comes Gratian himself, whose celebrated Decretum was published before A.D. 1150; and then follow in rapid succession Roland, professor at Bologna, and afterwards Pope Alexander III. (pope A.D. 1159-1181); Peter Lombard, the renowned *Master of the Sentences*, but rather theologian than Canonist, who taught in Paris, and was afterwards bishop of that city (bp. A.D. 1159-1164); Bernard of Pavia (c. A.D. 1177); Tancred (c. A.D. 1210); Robert of Malmsbury, an Englishman and canon of S. Victor at Paris (c. A.D. 1207). It is to this succession of great teachers, chiefly

Hincmar.

The period
of the
Canonists.

¹ Hincmar, *De Divortio Lotharii et Tetbergæ*, int. 21. (Migne's Ed. tom. i. p. 732.)

Canonists, that the existing law and practice of Western Christendom as to the divorce and remarriage of converts is really due.

Hugo of
S. Victor.

The celebrated Hugo of S. Victor, who taught in the theological school of Paris, has been rightly described as a precursor of Scholasticism; but he was also the immediate precursor in point of time of the Canonists, and did not fail to influence them in many directions. He was teaching at Paris from A.D. 1133 till his death in A.D. 1141, whereas the Decretum of Gratian is ascribed to some date between A.D. 1139 and 1150. Hugo, in his treatise *De Sacramentis*, has a whole chapter on the subject of the marriages of non-Christians. He quotes S. Augustine, S. Ambrose, and S. Gregory. The quotation from S. Gregory¹ does not appear to be found in the works of the great pontiff, and, as will presently be noticed, the quotation by Gratian as from S. Gregory of a passage which seems to belong really to Ambrosiaster was a great point in the case of the Jansenists of the last century. Hugo quotes with much verbal difference, if his quotation be compared with that made by Gratian, and either one or both of these writers must have quoted with a very free hand. It is clear that Gratian was not copying from Hugo, for Gratian not only varies, but is considerably the fuller; and yet both quote as from S. Gregory. It may be doubted whether they were not both employing some source not now known to us.

Whatever the authorities of Hugo, however, his bold and sharply-cut conclusions are his own. Starting from S. Paul's permission to separate in certain cases, and assuming the truth of the statement adduced as from S. Gregory that "the injury of the Creator dissolves the right of marriage," or, in other words, that the marriage of the fallen and unbaptized fails to acquire the indissoluble character because of their state of sin and alienation, which is the *injuria Creatoris*; he arrives at the conclusion that there is in no case any obligation to continue such a union after the baptism of one of the parties. The convert "is not subject to bondage, but is free to do as he will,

¹ Hugo de S. Victor, *De Sacramentis*, lib. ii. par. 2, cap. 11. (Migne, *Patrologia Latina*, tom. clxxvi. p. 506.)

only in the Lord ; to marry a wife, if he be a man ; if a woman, to be married. Let him choose what union he will, he is no longer bound by the obligations of the prior union, the right of which is dissolved on account of the *injuria Creatoris*. And this *injuria Creatoris* excuses the baptized not only when, being dismissed by the unbeliever on God's account, he is united without fault to another ; but it even excuses him in the case where the believer of his own motion, rather choosing Christian fellowship, abhors out of Christian devotion the unbelieving partner, who is willing indeed to abide with him, but refuses to receive the Christian faith. For whether the unbeliever depart or choose to remain, he who has been made a believer owes nothing to him. No one can make him do otherwise than as he will. The injury of the Creator dissolves the right of marriage.”¹

This bold statement, if it stand in need of modification, is the decision of one who, at any rate, went straight to the heart of the question.

If such marriages could be dissolved in any case, they could in no case be indissoluble by their own essential character. He does not entertain the idea which was adopted by Gratian, and has since been largely followed, that the dissolubility or indissolubility of such marriages depends on the caprice of the unbelieving partner. To Hugo it is clear that if they can be dissolved in any case, they are essentially soluble. In laying stress on the *injuria Creatoris*, which he evidently understands to be the state of sin in which the unbaptized lie, he no less grasps the key of the position. His quotation may not be capable of verification as from S. Gregory ; but as supplying the principle which really underlies the solubility of these marriages, it explains much which must otherwise be inexplicable. It is not, perhaps, much to be wondered at that so strong an intelligence as that of Hugo should be a little too summary in dealing with the lights and shades of the subject. Having grasped the principle that where there is *injuria Creatoris* there is to be recognised the solubility of marriage, he at once broadly infers that the convert may do exactly as he likes.

¹ *Id.* c. 13. (Migne, p. 508.)

Here he parts company from S. Paul. The permission to continue marriage with the unbeliever who consents to abide is not by S. Paul accorded to the mere caprice of the converted partner. There are in that previous union remains of the sacred mystery of the Divine institution, which, though they may lack the perfectness which alone can claim entire indissolubility, are nevertheless not to be torn asunder without loss. To meet the difficulty there is offered to the believing partner a special grace of sanctification, for the acceptance or rejection of which offer he does not fail to be responsible.

But to Hugo of S. Victor must be ascribed the credit of clearly seeing what the laws of thought do seem to demand, viz., (1) that if these marriages are soluble in any case, their solubility is in their own essential character; and (2) that the principle which thus differentiates them from the marriages of the faithful among themselves must be found in the different condition of the unbelieving party, who, as in a state fallen and unrestored, is stamped with the *injuria Creatoris*.

*Injuria
Creatoris.*

Before leaving Hugo of S. Victor it is desirable to point out that the *injuria Creatoris*, which is so much to him, is commonly known in later theology as *contumelia Creatoris*, and that with the change of word there comes a very important change of meaning. With Hugo the fallen state of those not restored by baptism is itself injury of the Creator. With Gratian the unbeliever is not guilty of contumely of the Creator unless he in some way throws obstacles in the way of the exercise of the Christian religion by the believing partner. There is here a most important difference of principle, and with it much that was clear to Hugo becomes dim to his successors.

*Gratian's
Decretum.*

It is difficult to exaggerate the influence which was acquired in the middle ages by the celebrated *Decretum* of Gratian. In the courts the authorities referred to in the *Decretum* are indeed received according to their own proper weight, and not on the authority of the *Decretum*; nor are the *dicta* of Gratian authoritative. Nevertheless as the recognised codification of the Canon Law the *Decretum* in the middle ages simply swept all before it. Able Canonists found it best to teach by means

of commentaries upon it, and despite the defects inseparable from a work compiled in so uncritical an age it became from the first, and has never ceased to be, the great text-book of the Canon Law.¹

On the subject of the divorce and remarriage of converts Gratian first quotes from a Council which he calls the Council of Meaux, but which, as has been noticed, was probably the Council of Tribur. The quotation forbids the remarriage of a convert after baptism so long as the unbelieving partner was living.² Then, on the other side, Gratian goes on to quote as from S. Gregory. The passage quoted is not found in the works of S. Gregory, but will be found to tally on the whole with the passage already noticed from the writer known as Ambrosiaster. It is not a very exact quotation, but it is similar enough to make it certain that if S. Gregory, or any writer later than Ambrosiaster, used the passage as Gratian quotes it, such writer must have been indebted to Ambrosiaster. The remarkable circumstance has already been noticed that several years before Gratian's compilation Hugo of S. Victor also quoted a passage as from S. Gregory, and that the passage which he quotes resembles Ambrosiaster much more distantly. This basing on a passage which is not found in S. Gregory has been the ground of an indictment in later times by the Jansenist school of the whole practice of the Church as regards the remarriage of converts. That practice, they said, was based on the Decretum of Gratian, and the Decretum of Gratian based here on a spurious passage purporting to be S. Gregory's. They argued accordingly that the practice should fall to the ground.

Whatever the influence of the quotation as from S. Gregory, the summing up of Gratian is of the greatest importance in the history of the subject. He parts company with Hugo of S. Victor where Hugo of S. Victor parts company with S. Paul, but in doing so he goes farther than S. Paul. S. Paul had said

¹ "As early as the twelfth century, in quoting a passage from Gratian, the Popes used to say it was 'in sacris canonibus,' or 'in decretis.'" Janus, *The Pope and the Council*, Eng. Trans. p. 150.

² Gratian's *Decretum*, Secunda Pars, Causa xxviii. Quaest. ii.

that if the unbeliever was willing to abide, the believer should not put him or her away. Hugo said that the believer was at liberty to do as he liked, the marriage not being indissoluble. Gratian, gathering that the believer is not at liberty to do altogether what he likes, concludes that the marriage is indissoluble in the case where the unbelieving partner is willing to abide. In the case where the unbelieving partner voluntarily brings the union to an end, Gratian concludes that there is no indissoluble *vinculum*. When the unbeliever goes, he leaves the believer free to marry again. Consequently Gratian arrives in effect at the result that the dissolubility or indissolubility of the marriage-bond depends entirely on the caprice of the unbelieving partner.

Roland. It is obvious that such a position would not be likely to pass unchallenged, and in fact one of Gratian's great successors, the Cardinal Roland, afterwards Alexander III., declines to maintain it. According to Roland, in marriage prior to baptism the indissoluble *vinculum* does not exist. Yet it is by no means to be allowed, with Hugo of S. Victor, that the believing party may do as he likes as to marrying again. With S. Augustine and with Gratian, Roland is of opinion that the believing partner may require a separation of life; but if he do so, he is none the more free to marry again except in one of three specified cases; viz.,

- (1) If the unbelieving partner is not willing to abide.
- (2) If he worship idols.
- (3) If he impels to moral crime.¹

This threefold classification of justifying causes is worthy of attention, since, while it appears to occur first here, it becomes afterwards, with some modifications, one of the commonplaces of theology. The two last causes specified, the religious or moral perversion to be apprehended from the unbelieving husband, are with Gratian no causes at all. With him in these cases the unbeliever has not dissolved the union by his own action *lege fori*, and therefore the marriage is not dissolved.

¹ Thaner, *Die Summa Magistri Rolandi*, 133 sq., quoted by Freisen, *Geschichte des Canonischen Eherechts*, 812.

Roland is careful to point out that the indissolubility of Christian marriage is not in any way affected by the falling away to unbelief of either of the two Christian partners. Once married in Christian marriage, no subsequent fault can sever the bond. It is only outside of and prior to baptism that marriage is essentially soluble.

Peter Lombard, the *Master of the Sentences*, takes the same line as Gratian. The believer may elect in any case to forbear living with the unbeliever, but may only remarry in the one case of desertion by the unbeliever. With him, as with Gratian, the continuance of the *vinculum* depends entirely on the will of the unbelieving partner.¹ Bernard of Pavia, like Gratian and Peter Lombard, does not appear to find in the *contumelia Creatoris* any ground of severance which would justify remarriage if the unbeliever is willing to abide. He goes on to consider the case of an unbelieving wife who has departed on the conversion of her husband, but who subsequently is converted herself, and then desires to be reunited to the husband. Bernard is of opinion that in such a case the decision should depend on whether the husband has in the meanwhile contracted another marriage or not. If he has, the second wife, whom he has married with Christian marriage, is his wife, and the first wife has in this case no right to claim the husband on the ground of her own subsequent conversion. If he has not remarried, Bernard thinks the husband "ought to give himself back to her, since when the ground of separation is at an end the separation ought to be at an end."² All would allow that such a result would be ordinarily a matter for congratulation. But it is not clear whether Bernard means merely that the reconciliation is eminently desirable, or whether he means that the *vinculum* actually exists till such time as the believing partner contracts a second marriage, and that the conversion of the unbelieving partner before the believing partner has effected a second marriage obliges both to the

Peter Lombard.

Bernard of Pavia.

¹ Peter Lombard, *Sentences*, iv. dist. 39, 7. (Migne, *Patrologia Latina*, tom. xcii. p. 936.)

² Laspeyres, *Bernardi Papiensis Faventini episcopi summa decretalium*, p. 291 sq. (Quoted by Freisen, 818.)

continuance of the *vinculum* which has never been dissolved. This theory, that the *vinculum* is first dissolved by the remarriage of the believing partner, became at a much later time very prevalent in consequence of the teaching of Cardinal Lambertini, afterwards Benedict XIV. Bernard, like Roland, teaches that the apostasy of one of the parties to a Christian marriage can never supply ground for divorce, inasmuch as Christian marriage once effected is essentially indissoluble.

Robert of
Malms-
bury.

Robert of Malmsbury shews considerable confusion of principles. He is clear that ordinarily, if the unbeliever is willing to abide, the believer is not free to marry again. In the case of Jews, however, this does not hold good, as the marriage is not permitted to continue unless both are converted. He is evidently endeavouring to reconcile some of the Western, more particularly the Spanish, Councils with the ordinary teaching of his own day. In any case, if the unbelieving partner, though willing to abide, proceeds to hatred of Christianity (*cedit in odium Christianitatis*), the believer is free to marry again.¹

Tancred.

The Canonist Tancred, following Roland, but with modifications, formulates three cases in which the converted partner may remarry:

- (1) If the unbeliever is not willing to abide.
- (2) If he be willing to abide, but not without injury and blasphemy of the name of Christ.
- (3) If he be willing to abide, but not without attempts to lead the Christian partner into infidelity or other mortal sin.

In any of these three cases the "contumely of the Creator" dissolves the right of marriage.²

It is undesirable to dwell longer upon this period of the Canonist teachers. It is, however, distinctly to them, as has been said, that the present law and usage of Western Christendom is due. The most authoritative form in which the teaching of the Canonists was at length enshrined is to be

¹ Schulte, *Roberti Malmesburiensis summa de matrimonio et usuris*, p. 17, quoted by Freisen, 820.

² Wunderlich, *Tancredi summa de matrimonio*, p. 49. (Freisen, 822.)

found in those utterances of Innocent III., which were pre-
served in the Decretals, and so became an authoritative portion
of the *Corpis Juris Canonici*. Innocent
III. (The
Decretals.)

Innocent's ruling is as follows: "If one of two unbelieving consorts be converted to the Catholic faith, but the other be not willing to cohabit with him (1) in any case, or (2) without blasphemy of the Divine name, or (3) without drawing him on to mortal sin, he who is (thus) deserted may pass over to a second marriage if he will. And we understand that it is in this case that the apostle says, 'If the unbeliever depart, let him depart. A brother or a sister is not bound in such a case'; and also the canon, in which it is said that 'the contumely of the Creator dissolves the *jus matrimonii* with regard to him who is deserted.' But if one of two believing consorts either fall into heresy, or pass over to the error of Paganism, we do not believe that in this case the one who is left can betake himself to second wedlock during the lifetime of the other, notwithstanding the fact that in this case the contumely of the Creator seems to be greater. For although there is indeed true marriage among unbelievers, yet it is not *ratum*. But among the faithful it exists as both true and *ratum*, because a sacrament of the faith which is once received is never lost; but the ratification effects the sacrament of marriage, so that in married people the one remains with the other," *i.e. matrimonium ratum* and the sacrament of marriage.¹

The following chapter, *Gaudemus*,² has some further important rulings. One who has repudiated an unbelieving consort may on no account marry a second time, except in one of the three cases already specified. If in one of these cases the converted partner exercise the right of second marriage, the subsequent conversion of the unbelieving partner establishes no right to reclamation of marriage. If, however, the converted partner has not married a second time before the conversion of the unbelieving partner, then Innocent rules that the partner first converted should be compelled to receive the other again.

¹ *Decretales Gregorii*, ix. lib. iv. 19. De Divortiis, c. 7.

² *Id.* c. 8.

The rulings of Innocent may be said to be the great authority for the practice of the Western Church in the matter for the last six centuries.

It will be seen that the three cases in which remarriage is allowed; viz. (1) refusal to cohabit in any case, or (2) without blasphemy of the Divine name, or (3) without solicitation to mortal sin, are really equivalent to the *χωρίζεται* of S. Paul as interpreted by S. Chrysostom. If the unbeliever be the cause of separation, then the brother or the sister is not bound; that is to say, rules Innocent, he or she may marry again.

S. Thomas
Aquinas
and S.
Bonaven-
ture.

It is not to the great scholastic writers that the Church is most largely indebted for its teaching in marriage questions, but reference may be made to the conclusions of S. Thomas Aquinas (A.D. 1224-1274) and S. Bonaventure (A.D. 1221-1274). They are entirely in accordance with the rulings of Innocent III. Both see clearly that the key to the position is the essential dissolubility of non-Christian marriage. S. Thomas says that the marriage of unbelievers is "imperfect," and that "it is not altogether firm and *ratum*."¹ S. Bonaventure says that the "feebleness" (*imbecillitas*) of marriage contracted in unbelief renders dissolution possible, that disparity of worship disposes to such dissolution, and that injury of the Creator effects it.²

America
and India,
A.D. 1500.

With the discovery of America, and the opening out of intercourse with India by the Cape, at the end of the fifteenth century, there came a new era of missionary activity. The Portuguese ascendancy in the East, with its centre at Goa, was, roundly speaking, coincident with the sixteenth century, rising to strength by A.D. 1500, and falling in strength from A.D. 1600. From the missionary point of view its importance lies in that great and successful effort which is identified with the honoured name of S. Francis Xavier. In America the propagation of Christianity formed part of the not very gentle suasions of the Spanish adventurers. In both parts of the world the difficult question which we are considering would not uncommonly present itself, and it would not fail to be

¹ S. Thomas Aquinas, *Summæ tertiæ partis suppl.* qu. 59, art. 5.

² S. Bonaventure, *Commentaries on the Sentences*. On book iv. dist. 39, art. 2, qu. 1. (*Opera Omnia*, Romæ, 1596, tom. vi. p. 500.)

complicated by the confusion of former utterances upon the subject. If, as Gratian and others had in fact taught, the dissolubility or indissolubility of the union depended in its essential character upon the expressed will of the unbelieving party, the central point which was above all else to be aimed at was the obtaining from the unbelieving partner a sufficient expression of his will. Hence a whole array of questions as to whether such expression of will might be lawfully dispensed with in cases where, by the absence or inaccessibility of the unbelieving partner, it was impossible or difficult to obtain such an expression of his will, and again, whether such dispensation, if possible, belonged to the Papal chair. The appeal to the unbelieving partner came to be technically known as the *interpellatio*, and where Gratian's view was adopted, upon the result of the *interpellatio* everything depended. It was not, however, till the sixteenth century had passed that this view rose into any great favour. In the sixteenth century itself authority seems generally to have taken firmer ground. Pope Paul III., in the Constitution *Altitudo* addressed in A.D. 1537 to the bishops of India, lays down a ruling in what might have seemed to be an almost impossible case. When a polygamist on conversion to Christianity was unable to remember which of his wives he had married first, Paul decides that he may retain any one of the wives, whichever he may choose.¹ The ordinary rule at the time was that a polygamist on his baptism was bound to dismiss all his wives except the first married, the inspiring principle of the rule being doubtless the view that such first-married wife was the one true wife, with regard to whom a *vinculum* must be held to exist. If this view had prevailed with Paul III., and with it the view that the *vinculum* of such a marriage was indissoluble at least till the interpellation had been made, his decision in the difficulty before him must necessarily have been that after some sufficient investigation it must be decided which of the wives had the best claim to be considered the first, and that then the converted husband must be held bound to her, if she was willing to abide without

The Inter-
pellatio.

Paul III.
A.D. 1537.

¹ *Bullarium sacrae congregationis de propaganda fide*, App. i. p. 25.

“contumely of the Creator.” The actual decision, however, was to the effect that the convert might choose which of the wives he liked, and therefore not less a young wife married a month previously than a wife of longer standing. To justify such a ruling it is necessary to premise that there is no essential indissolubility in any one of these marriages; and this may accordingly be assumed to be the view of Paul III.

Pius V.
A.D. 1571.

The same principle is contained in a Constitution of Pius V., dated 2nd August, 1571.¹ This Constitution lays down that if any one of the wives is converted and baptized with the husband, he may retain such Christian wife in preference to the first wife of his unconverted condition. Here again we must premise, for the justification of the ruling, that all the marriages of such a person prior to baptism are essentially dissoluble, not less the first of such marriages than those which follow, and that their dissolubility depends in no wise on the interpellation.

Gregory
XIII.
A.D. 1585.

Gregory XIII. (A.D. 1572-1585), in the brief *Populis ac nationibus* (25th January, 1585), decides in the same sense. Reciting that many men having wives had been carried captive from Angola, Ethiopia, and Brazil, and that it was impossible in such cases to obtain an expression of the will of the unbelieving party, he proceeds to convey to all bishops, parish priests, and priests of the Society of Jesus, the right of dispensing converts from the necessity of interpellation (*etiam superstite conjuge infideli, et ejus consensu minime requisito, responso non expectato*). The interpellation thus dispensed with, the convert may contract marriage with any of the faithful, and when once this marriage has been contracted, it is to be held binding for life.²

Gregory expressly states where he looks for the justification of the divorce. The marriages of infidels, he says, are to be held true contracts, but not in such wise ratified (*rata*) that they cannot be dissolved when necessity urges it (*necessitate suadente*). There is then no essential indissolubility, and the

¹ *Bullarium pontificium sacrae congregationis de propaganda fide*, App. tom. i. p. 45 (Romæ, 1841).

² *Bullarium sacrae congregationis de propaganda fide*, App. i. p. 103.

practical guide as to whether a particular union should be maintained or dissolved, is not necessarily in all cases the expression of the will of the unbelieving party, but may be the persuasive force of necessity.

It will hardly be matter of surprise that the rulings of the Council of Lima (A.D. 1582), which were afterwards confirmed by Sixtus V. (A.D. 1585-90), should be something of a compromise between the old stern prohibition of all union with unbelievers, which characterized the Spanish Church, and the more indulgent, not to say more scriptural and primitive, feeling of the Church at large. If the converted partner had reason to hope for the conversion of the unbelieving partner, he was not to proceed to a second marriage, but to await such conversion; and if such conversion was deferred, he was to wait six months, doing his best to bring it about. The six months ended, the matter was to be referred to the bishop, who, after careful examination of the case, was either (1) to rule that the convert was at liberty to proceed to a fresh marriage, "on account of the offence (*scandalum*) to faith or charity which he was suffering," or (2) if the bishop saw that there was no danger in cohabitation, he was to bid the convert to await the unbeliever, or, if he thought it better, to counsel him to do so.¹ This ruling does not apply to any of the three cases in which the convert was generally recognised as set free; viz., the departure of the unbeliever, the contumely of the Creator, or the enticement to mortal sin; and it is remarkable that while in these three cases the statement hitherto most commonly made had been to the effect that the convert was free, the Council of Lima declares that the "sacred canons will that such should of necessity be separated." It is, however, when none of these three reasons are forthcoming that the decision of the matter is made to depend, not on the will of the unbelieving partner, but on the judgment of the bishop, who is evidently to decide on grounds of expediency as to the life before the parties. If in the particular case he thinks that there is no great promise of a Christian life, but rather a certain danger in cohabitation, he is to proceed to declare the

¹ Quoted by Perrone, *De Matrimonio*, tom. ii. p. 324.

convert at liberty to marry again, assigning as the ground the *fidei aut charitatis scandalum*, which appears to be a general phrase applicable on occasion to any case of mixed marriage; but, on the other hand, if he anticipates no danger, he may decline to afford any such facility of remarriage, referring the convert to his former partner with more or less insistency. It does not appear very clearly whether the parties were allowed to come together during the prescribed time of expectancy. Presumably not, since to the convert such union must either have had the character of fornication or of Christian marriage; and if it had once acquired the character of Christian marriage, the question would have been solved beyond the possibility of any other solution. But it is never safe thus to read inferences into documents, however apparently necessary they may be.

Sacred
Congre-
gation of
the
Council,
A.D. 1603.

The practical needs of the sixteenth century thus largely overthrew the doctrine that the solubility of the marriage depended on the will of the unbelieving party. But presumably from abuse of the powers of dispensation thus accorded, alike in the missions of the East and in those of the West, we find the view of Gratian asserting itself again in a reply from the *Sacra Congregatio Concilii*, dated 23rd January, A.D. 1603. The Congregation laid down that "the aforesaid converts to the true faith can on no account accept other Christian wives, unless it be first established whether the first wives are willing to abide with them or not. But if these decline to cohabit, or will only cohabit with 'contumely of the Creator,' or in such wise as to drag the converted partner into mortal sin, that then the believing partners may accept other wives. If they are willing to cohabit without 'contumely of the Creator,' and without attempt to involve the converted partner in mortal sin, then, although they are unwilling to accept the true faith, yet the converted partners cannot receive other Christian wives. That those matters which are brought forward, viz. distance of place, difficulty (of interpellation), and presumption, are not sufficient when it is necessary to have proof (*constare debeat*) of the will of the unbelieving wives themselves."¹ The practical conclusions will

¹ Perrone, *De Matrimonio*, tom. ii. p. 313, quoting lib. x. Decret. p. 55.

commend themselves as being more in accordance with Holy Scripture than a lax system of dispensation. The stress laid upon the necessity of evidence as to the will of the unbelieving partner is clearly based upon the view of Gratian.

A question of much importance in practice arose as a consequence of the view which we have called Gratian's. If the marriages of non-Christians are essentially binding, only ceasing to have the entirely indissoluble character in the particular case of the unbeliever expressly refusing to abide (or to abide without "contumely of the Creator"), then it becomes important in practice to know at what precise point of time the union loses the binding character, and the convert is left at liberty to contract a fresh marriage. Is it at the moment of conversion, or at that of baptism, or at the moment of the expression of the unbelieving partner's will, or at the moment of the remarriage of the unbelieving partner, or at that of the remarriage of the believing partner, or at what other point of time? A celebrated case turning upon this question came up before the Sacred Congregation of the Council in A.D. 1726, when Cardinal Lambertini, afterwards Benedict XIV., was secretary.¹ A certain Jew named Abraham had been married to a Jewess named Ricca Esther, who after a time became a convert to Christianity. On her conversion she made the usual interpellation to her husband, who declined to retain her. She was therefore free to marry again. While, however, she was held free to marry again, she did not in fact avail herself of this freedom, but remained unmarried. Abraham, having repudiated Ricca Esther, had, as a Jew, no scruple as to marrying again, and did in fact marry a certain Jewess named Bianca, who had been a servant in his household while Ricca was his wife. After several years had elapsed both Abraham and Bianca became convinced of the truth of Christianity, and were received as catechumens. They expressed their wish that after baptism they might continue with one another in the marriage relation, and Ricca, the

At what point of time does the union lose its binding character?

Case of Abraham and Ricca Esther.

¹ Thesaurus Resolutionum S. Congreg. Concilii, 1726. See Hergenröther's article, "Die Auflösung der Ehe durch das privilegium Paulinum," in *Der Katholik* (Mainz) of 1883, p. 267.

former wife, had no objection to urge, as she, for her part, was not prepared to return to Abraham in any event. The case was referred to the Congregation on five points, of which the first two are the most important. They were:

- (1) Whether the marriage contracted between Abraham and Ricca was still in force.
- (2) Whether Abraham, after the conversion of himself and Bianca, was bound to return to Ricca and leave Bianca.

To both these questions the Congregation, in its sitting of the 27th July, 1726, replied in the affirmative.

The case is full of interest. If the Congregation had taken the well-supported view that non-Christian marriages do not possess at any time the character of entire indissolubility, the decision would have been easy enough. The second marriage, that of Abraham with Bianca, would have been maintained after the baptism, or rather it would have been allowed to become for the first time indissoluble, because Christian, marriage. The first marriage with Ricca Esther would have been held to have been dissolved from the time of the conversion of Ricca Esther, and of the separation of life which thereupon ensued. But this simple view does not appear to have come within the scope of the arguments with which the Congregation dealt. Starting from the premise that the non-Christian marriage with Ricca Esther had at one time possessed the binding character, the only question was as to when, if at all, that binding character had ceased to exist. Cardinal Lambertini guided the Congregation to the decision that the marriage must be held to be binding till such time as the converted partner effected another marriage. The refusal to abide on the part of the unbelieving partner did indeed supply the justification of divorce, without which it would have been impossible; but the divorce was not held to have been effected till the believing partner put it into practical force by contracting another marriage. Consequently the decision given was that Abraham must leave Bianca and return to Ricca Esther.

The principle of Gratian, which Cardinal Lambertini adopted, and which the case of Abraham went to determine as to the time of its operation, is maintained in the well-known work *De Synodo Diocesana*, which was published by Lambertini after his accession to the Papacy, under his Papal name of Benedict XIV. In this book he states that "it is not competent to a converted partner to pass over to other vows before that the unbelieving partner, having been interpellated, has either absolutely refused to cohabit with him, or has displayed his intention of indeed cohabiting with him, but not without 'contumely of the Creator.'" ¹ He admits, however, that where the interpellation is impossible a dispensation may be given.

Some twenty years after the case of Abraham there occurred in France a case which is, beyond all others, the *cause célèbre* of the subject. In connection with it the important Jansenist party in the Gallican Church reopened the whole subject, taking the line that all marriages, non-Christian as well as Christian, were essentially indissoluble.

The case was this. A certain Jew named Borach Levi was converted in the year 1752. Mendel Cerf, who had been his wife for fifteen years, refused to follow him, and demanded a divorce. Borach Levi was accordingly desirous of contracting another marriage, and to that end of having his marriage with Mendel Cerf either annulled or dissolved by proper authority. The case came on before the episcopal Curia of Soissons, which was then predominantly Jansenist, and this tribunal decided that the marriage with Mendel Cerf continued to bind, and that Borach Levi must be restrained from contracting another marriage. Borach Levi appealed from this decision to the *parlement* of the Province, where the case was re-heard. The result was that the finding of the episcopal Curia of Soissons was confirmed, and that by the sentence of M. Segulier, the Advocate-General, an *Arrêt* was issued on the 2nd January, 1758, forbidding Borach Levi to marry again during the lifetime of Mendel Cerf.

¹ Benedict XIV., *De Synodo Diocesana*, lib. i. c. 4, § 3. (Moguntiae, 1840, tom. i. p. 420.)

The arguments of the Jansenist theologians are of great interest. It was fully admitted that both canonists and theologians for many centuries past had understood the words of S. Paul as permitting a real dissolution of marriage; but it was argued that this uniformity of view was not to be considered, since it could not possibly introduce an exception, however plausible it might seem, into that essential character of indissolubility which was stamped upon marriage by the law of GOD Himself. It was urged further that the source of the unanimity was not far to seek. The Canon Law here based mainly on the Decretal of Innocent III., and Innocent III. had only followed Gratian; and Gratian had based upon a passage ascribed by him to S. Gregory, but which found no place in S. Gregory's work. The passage seemed to be a quotation from a commentary, which had indeed been once assigned to S. Ambrose, but which was now known to be none of his. It was therefore void of all authority, and nothing could be built upon it.¹

Questions
of the
Missions
of Cochin,
A.D. 1759.

The decision of the French *Parlement*, which was indeed a secular tribunal, does not appear to have much affected the theory or practice of the Christian Church outside the limits of France. The decision in the case of Borach Levi was given in A.D. 1758, and in the very next year (A.D. 1759) we find the Sacred Congregation of the Holy Office at Rome issuing a series of replies to questions submitted by the Missions of Cochin, which, to say the least, are startling by the license they afford.²

The Missions of Cochin had been taught by experience that it occasionally happened that a convert and his unbelieving partner might continue to live as man and wife for several years, and that then the unbeliever might assert his independence, leave the Christian partner, and marry again. The Christian partner was thus left without a wife or husband, as the case might be, yet bound. It is, of course, this very inequality of the conditions of the marriage which renders the permission of S. Paul to continue the relation so great a concession; and it

¹ *Conférences d'Angers ; Sur le mariage*, p. 333.

² Quoted by Perrone, *De Matrimonio*, tom. ii. p. 322.

might surely be understood that those who avail themselves of the concession must accept its possibilities. The Cochin Missions, however, raised the question whether the partner thus deserted was in fact bound, or whether his right of remarriage did not rather revert to him upon the desertion. The Sacred Congregation in their answer shewed how serious a matter it may be to base even a right practice on a wrong principle. Assuming, doubtless, that what dissolved these marriages was, as in Gratian's view, the caprice of the unbelieving partner, they proceeded to infer that whensoever this caprice came in, it would equally affect its result. Consequently at whatsoever time the unbelieving partner might desert the believing partner, the believing partner would become free from the marriage bond. In other words, the marriages in which Christian converts are permitted to continue after baptism are simply marriages during the good pleasure of the unbelieving partner. So far from being indissoluble, like the true marriages of the baptized, they are not even binding for a definite term. At any moment, when the caprice of the unbeliever shall so order it, will the believer become free to marry again on complying with the regulation as to *interpellatio*.

Duration of marriage dependent on caprice of unbeliever.

It might be thought that no more convincing *reductio ad absurdum* of the doctrine of Gratian could be asked for: but this doctrine, with all its consequences, seems to be still the most favoured conclusion in the Latin Church. Obviously it has the effect of altering the centre of gravity in the matter. Since it is the expression of the will of the unbeliever that makes the marriage of the believer to be either entirely dissoluble or entirely indissoluble, everything depends upon this expression of the will. Accordingly the Sacred Congregation *de propaganda Fide*, in reply to the Vicar-Apostolic of Western Tonquin in A.D. 1816, apply themselves to the elucidation of this point with much precision.¹ (1) They lay down that the interpellation is essential not only to the regularity of the separation as a judicial act, but even to its validity. The Papal dispensation may, however, be granted

Congregation de propaganda Fide, A.D. 1816.

¹ Quoted by Perrone, *De Matrimonio*, tom. ii. p. 324.

for lawful reasons. (2) They condemn the rough-and-ready method of the Spanish Church, to which Sanchez had given expression in the doctrine that the interpellation need only ask whether the unbeliever would be converted or not. The Congregation decides that the interpellation must ascertain whether the unbeliever is willing to cohabit without "contumely of the Creator." (3) No act of expulsion or divorce, however significant, is to be taken as dispensing with the interpellation, which is only to be dispensed with by the Apostolic See. (4) A curious question which was the fruit of Gratian's doctrine next engaged attention. If the marriages of the heathen were essentially indissoluble in the case of non-Christians till the interpellation was made, how of the case of a woman who in her non-Christian days had first been married to, and then divorced by, a non-Christian husband? Was such a woman to be held bound to return to her former husband if he would have her, and if so, might she make conditions as to his putting away the woman whom he had subsequently taken? The question discloses another of the difficulties which is involved in the maintenance of the indissoluble character of non-Christian marriage. The Congregation appear to be more in harmony with Christian practice than with the logic of their own position, when they reply that the woman may be baptized without any condition regarding her former marriage. (5) Another most important question which the doctrine of Gratian affected was the question as to the *status* of one who had divorced an unbelieving partner for adultery. The Congregation, still assuming the essentially indissoluble character of non-Christian marriage, decide that a separation of life is permissible, and that the Christian partner is not required to cohabit, though the other may be willing to do so without "contumely of the Creator." There is, however, no sanction given for the dissolution of marriage in this case.

Synod of
Su-chu.

The decisions of the Synod of the Vicariate of Su-chu in 1803, which were subsequently approved by the Sacred Congregation *de propaganda Fide*, are also of interest as defining how far interpellation was obligatory, and where

dispensation might come in.¹ This Synod also took in hand the difficulty arising from the existing rule as to polygamous converts. That rule laid down that a polygamist might, after conversion and baptism, retain that one of his wives which he preferred, provided that she too become a Christian, and provided also that the wife first married declined to be converted. Here a dilemma presented itself. If the wife first married was wife in a sense not shared by the others; if, in fact, she was *the* wife; and if, farther, the marriage of non-Christians was indissoluble till interpellation had been made, and the unwillingness to abide made certain, why was not the polygamous husband bound to make the interpellation to her, and bound to retain her as his wife, if she was willing to abide without "contumely of the Creator"? If, on the other hand, the first wife was not bound to him more than any other, or if she was not bound by any tie which the Christian Church could recognise as indissoluble pending interpellation, why should the husband be required to marry such first wife instead of any other, in the event of her becoming a convert? The Synod of Su-chu accordingly decided that the duty of interpellation must be read into the rule as to polygamist converts, and that it must be understood that such converts were not at liberty to choose any wife but the first till the first had been interpellated. As, however, the rule as to polygamous converts distinctly permitted the rejection of the first wife, if she refused to become a Christian, the interpellation in such cases was not to be the usual enquiry whether the wife was willing to abide without "contumely of the Creator," but whether she would become a Christian. The inconsistency of thus substituting an altogether different interpellation needs no comment. This particular interpellation was in fact (for ordinary cases of remarriage of converts) condemned, as we have seen, by the Sacred Congregation *de propaganda Fide* in 1816. The simple fact was, that the rule about polygamist converts and the rule about interpellation were irreconcilable.

The wives
of a poly-
gamist.

The later
English
Church.

Nothing has been cited in this chapter from the law and

¹ Quoted by Perrone, *De Matrimonio*, tom. ii. p. 318.

practice of the later English Church, because there is nothing to cite. On this subject Father Puller may be quoted.¹ "As regards the law and practice of England, Dr. Walter Phillimore,² the Chancellor of Lincoln, writes to me to say that he cannot find that the question has ever been discussed. When one remembers that until the seventeenth century England had no possessions in heathen countries, and that the Jews were expelled from the kingdom from Edward I., and were not re-admitted until the time of the Commonwealth, this curious fact becomes intelligible. . . . Dr. Phillimore goes on to say, 'But is it not possible that a preliminary question arises whether the law of England would think there was any need of a divorce? Apparently it would not, if the heathen marriage were polygamous. Lord Penzance, sitting in the Divorce Court, in the case of *Hyde v. Hyde and Woodmansee* (Law Reports, 2 Probate and Divorce, p. 130), in a judgment well worth looking at, refused so far to recognize a Mormon marriage as to grant a divorce from it, saying that such a marriage was not, in the Christian sense, or in the sense understood in his Court, a marriage at all. He thought it made no difference that in the case in question there was actual monogamy, as there might have been at any time polygamy.' "

Mixed
marriages.

In pursuing the subject of the remarriage of converts we have for the time left on one side the related subject of mixed marriages. Is it lawful in any case for a baptized Christian to marry a non-Christian or person unbaptized? It is indisputable, as has been seen, that in the Church of the centuries between Constantine and Justinian not only were there many instances of such mixed marriages, but that discipline with regard to such cases was practically inoperative. The case of Synesius actually shews a Christian patriarch marrying a Christian woman with the Christian benediction to a non-Christian man. It cannot, however, be said that the practice was at any time approved.

From the time of Justinian it is on the whole true to say that the tendency was to restore the primitive condemnation

¹ Father Puller, in *Occasional Papers of the Oxford Mission to Calcutta*.

² Now Sir Walter Phillimore.

of mixed marriages. For some centuries it would appear that, notwithstanding peremptory prohibitions, a marriage between a Christian and a non-Christian was not regarded as essentially null and void. As, however, larger powers of discipline were achieved, this result was at length attained, and still remains, under ordinary circumstances, the ecclesiastical law of Western Christendom. The phrase "under ordinary circumstances" has to be inserted, because the comparatively recent practice of Papal dispensation has introduced exceptions.

The more Western Councils of the sixth century can best be treated together, although some of them belong by date to the former period. The Council of Agde, in A.D. 506, forbids marriage with heretics except when they promise to become Catholics. Whether they would be required to fulfil the promise before marriage is not stated. The Second Council of Orleans, in A.D. 533, prohibits intermarriage with Jews altogether. It pronounces such marriages unlawful (*illicitas*),¹ requires persons so united to separate, and decrees excommunication in case of refusal.² The Council of Clermont, in A.D. 535, speaks of intermarriage between a Christian and a Jew as "so great a wickedness" (*tantum nefas*), and excommunicates offenders.³ The Third Council of Orleans, in A.D. 538, forbids Christians, under pain of excommunication, to have any connection with Jewish marriages.⁴ Another Council of Orleans, in A.D. 541, decrees that a Jew who attempts to unite to himself a Christian maidservant is to be deprived of his slaves.⁵ The Third Council of Toledo, in A.D. 589, also prohibits Jews to have Christian women as wives or concubines, and requires that any children born of such unions shall be brought to baptism.⁶ The Fourth Council of Toledo, in A.D. 633, has already been noticed as denying to a Jew the society even of a wife who has become a convert to Christianity (*quae jam in Christianam translata est fidem*).⁷ It is of course not less peremptory in other cases.

¹ Mansi, tom. viii. p. 336.

² *Ibid.* p. 838.

³ *Ibid.* p. 861.

⁴ *Ibid.* tom. ix. p. 15.

⁵ *Ibid.* p. 118.

⁶ *Ibid.* tom. vi p. 996.

⁷ *Ibid.* tom. x. p. 634.

The Jewish husband must become a convert himself or forego the union. The Spanish Church simply takes the line that all unions between Christians and non-Christians are essentially inadmissible.

Instances. Notwithstanding the more entire prohibition of marriage between Christians and non-Christians, which characterizes the Councils of this period, occasional instances of such marriage do not fail to occur. Thus Clotilda, a Christian princess of the Burgundian kingdom, was married to Clovis, the Frankish king, in A.D. 492 or 493, her father, Gundobald, being afraid to refuse. In the following century Bertha (Bereta), daughter of Caribert, king of Paris, another Christian princess, was married to Ethelbert, king of Kent (A.D. 590?), on the condition that she should be allowed the exercise of her religion, and should be attended by a bishop.

The Canonists. After the Councils which have been cited, there is little or nothing to be found on the subject of mixed marriages between Christians and non-Christians till we come to the age of the Canonists. Gratian classes such marriages with marriages within the prohibited degrees, as being "contrary to the decree of GOD or of the Church." "All these," he says, "if they have coupled themselves, are to be separated."¹ Roland (Alexander III.) expresses the opinion that there is nothing to prevent the espousal or betrothal of two persons of whom one is not a Christian, as such betrothal is only a contract concerning the future, provided always that the marriage is not actually consummated prior to the baptism of the unbeliever. A marriage consummated between a believer and an unbeliever is not recognised.² Of the other Canonists of the middle ages, Bernard says that parties so marrying are to be separated; Tancred, that their marriage is null; Robert of Malmsbury, that it is not marriage.³

Mixed marriages forbidden rather by By such continued utterances of the Canonists the legal principle came to be established that the marriage of a Christian with a non-Christian was simply null and void.

¹ Gratian's *Decretum*, Causa xxviii. qu. 1, c. 14.

² Thaner, *Die Summa Magistri Rolandi*, 138, 140, 141. (Quoted by Freisen, 641.)

³ Freisen, pp. 641, 642.

Benedict XIV., in his Constitution *Singulari nobis* (A.D. 1749), points out that this principle is not established so much by the canons, which prohibit mixed marriages, but without expressly declaring them null and void, as by the customary law of the Church. "All agree," he says, "that marriages are void by reason of difference of religion, not indeed by the law of the sacred canons, but by the general custom of the Church, which has now been in force for many centuries, and obtains the authority of law."¹ customary law than by canon.

Notwithstanding, however, this "general custom of the Church," the insidious system of Papal dispensation was brought to bear upon this matter without, as it would seem, any attempt to find justification or authority in the mind of the Church. As early as A.D. 1669 we find Clement IX. writing to the Bishop of Heliopolis, and according a faculty of dispensation in the matter of mixed marriages.² Alike to that bishop and to the apostolic vicars in China, Tonquin, and Cochin China was accorded the right to dispense with the impediment of difference of religion for the period of fifteen years next following. In granting such dispensations the vicars were to be careful to grant them only for grave reasons, and in places where there were more infidels than Christians. But whatsoever restrictions were then and afterwards imposed, the principle of the essential nullity of such marriages was broken through, and may be said to be now given up by the Roman Catholic Church. It would be of no service to cite the various faculties of dispensation which have followed the action of Clement IX. There can be no better witness than Benedict XIV., who was not only a Pope, but a most able Canonist, that the custom of the Church had for centuries regarded such marriages as null. If they are null in their essential character, the modern action of the Popes in granting dispensations cannot count for much. It is certain that the system of dispensations leads to grave difficulties in practice. If a marriage, continued after the conversion of one of the parties, is liable, according to a decree already referred to, to Papal dispensations.

¹ Freisen, p. 643.

² Quoted by Perrone, *De Matrimonio*, tom. ii. p. 334.

be brought to an end at any time by the caprice of the unbelieving partner, what is there more sacred in a mixed marriage contracted, even by dispensation, without the justification of prior existence, that can render such a marriage less liable to an equally abrupt termination? Accordingly we find this very case submitted to the Congregation of the Holy Office by the Missions of Cochin, in A.D. 1759, in the same set of questions already referred to.¹ The question submitted is as follows: "Whether a baptized Christian (*fidelis*), who has by dispensation validly contracted matrimony with an unbeliever, may pass to a second marriage if the unbeliever depart, or decline to cohabit, or solicit her to the committal of mortal sin"? The reply is well worthy of notice: "If a Christian, by previous dispensation, has contracted matrimony with an unbeliever, he is to be regarded as having contracted that (matrimony) with an explicit condition; viz. that of course it could only be so long as the unbeliever was willing to cohabit with him without 'contumely of the Creator.' Wherefore, if the unbeliever do not observe the aforesaid condition, the remedies of the law are to be applied to this end, that she do observe it. Failing this, they ought to be separated *quoad torum et cohabitationem*, but not *quoad vinculum*. It follows that in the case under question the Christian cannot pass to a second marriage while the unbelieving partner survives."

By this decision the Congregation escaped the horrible alternative that the Pope could dispense Christians to contract temporary and conditional marriages, which the caprice of the unbelieving partner might at any time dissolve. But it does not appear why such a marriage by dispensation should be more sacred than the marriage of a Christian who had been converted after marriage, and had received a special sanctification of the Holy Spirit for the circumstances of his union. The more recent practice of the Roman Catholic Church is indeed hopelessly involved in contradictions.

The history of the subject in the West from the time of Justinian is now before us.

¹ Quoted by Perrone, *De Matrimonio*, tom. ii. p. 322.

First, as regards the remarriage of converts. In the earlier centuries of the period there is no cohesion of either sentiment or practice. To the Spanish Churches of the Visigothic kingdoms, all unions of Christians with the unbaptized were a horror; even the convert must leave the unconverted partner, unless he too would be baptized. In Italy and Germany all marriage was treated as indissoluble, not less that contracted outside Christianity than Christian marriage itself. The remarriage of the married convert was therefore not admitted, but only separation of life. In England the teaching of Theodore, derived from the East, held unbelief in the partner to be a sufficient ground for divorce and remarriage.

A. Re-marriage of converts.

The period of the Canonists, which centres in the Decretum of Gratian, threshed out many of the difficulties which surround the subject, and left behind it as result the teaching which is embodied in the Decretals in a ruling of Innocent III.: "If one of two unbelieving consorts be converted to the Catholic faith, but the other be not willing to cohabit with him (1) in any case, or (2) without blasphemy of the Divine name, or (3) without drawing him on to mortal sin; he who is thus deserted may pass over to a second marriage if he will." This has been the Canon Law of Western Christendom upon the subject for the last six hundred years.

The missionary activity of the last four centuries has made the subject one of constant recurrence in practice, and has directed much attention to certain points of secondary importance. Of these one of the most prominent is found in the question, Wherein lies the justifying cause of divorce in the cases of married converts? All are agreed that the conditions which render separation and remarriage blameless to the Christian partner are the conditions specified by Innocent III.; but do these conditions alter the character of the existing marriage from essential indissolubility to essential dissolubility, or do they simply supply the one which renders it blameless to act upon the fact of the dissolubility of non-Christian marriage which already exists? The latter is the more natural and less artificial view; but the view that the caprice of the unbelieving partner was that which retained or

dismissed the indissoluble *vinculum* of the existing union has been on the whole the most widely accepted in the Latin Church, and it has led to great refinements of direction in the matter of *interpellation*, in order that the will of the unbelieving partner might be sufficiently expressed.

Another point of considerable importance arises from the enquiry as to *when* the dissolution is effected. If the dissolution takes effect because the prior bond has no indissoluble character, and the convert is not required by Christian charity in the given case to make the tie indissoluble by continuing it after his baptism, the answer is easy. As there never has been an indissoluble union, so there is no need of a magic moment in which the indissoluble character shall pass away. The convert, from the moment of separation, must be held to be unfettered by any bond of marriage. If, however, as Gratian holds, and as has been very commonly held, the non-Christian marriage had the indissoluble character, it becomes necessary to fix a moment when the indissoluble character is lost. The Latin Church of the last century decided that this moment was the moment of the remarriage of the converted partner. Till that moment, though it should be fifty years after the separation, the original marriage-bond held both the parties to it.

A new departure, having no warrant in the teaching or practice of antiquity, permits the unbelieving partner to exercise his caprice, and thereby dissolve the marriage-bond to both the Christian partner and himself, even when the union has existed for some time after baptism. What then, it must be asked, has been the character of the marriage of the Christian partner in the interim? If it has not been Christian marriage, and therefore indissoluble, what has it been?

B. Mixed marriages.

As regards mixed marriages between Christians and non-Christians, the attitude of the Church throughout the period from Justinian onwards is one of prohibition. The early Councils might not be able to render such marriages invalid by their prohibitions, but this result became the customary law of the Church in the Middle Ages, and has been accepted

as such without much question for the last six hundred years. The force of the principle has, however, been much weakened in recent centuries by the system of Papal dispensations, which assume the power of authorising marriages between Christians and non-Christians in particular cases.

Broadly speaking, the results of eighteen and a half centuries of Christian teaching and practice are that—

Summary
of the
whole
historical
retrospect.

A. In the West, married converts may obtain a divorce with right of remarriage

1. If the unbeliever refuse to abide.
2. If he will not abide without "contumely of the Creator."
3. If he will not abide without soliciting the Christian partner to the commission of mortal sin.

In the East, the mere refusal of the unbelieving partner to be converted is held to be an adequate ground of divorce, with right of remarriage.

B. In the East and West alike, marriages between baptized persons and persons unbaptized stand prohibited, but in the later Western Church a power of Papal dispensation has been sometimes assumed.

The historical survey, so far as it concerns non-Christians, is now concluded; but a further point must be adverted to before the survey can be dismissed. If marriages between Christians and non-Christians are entirely barred, great importance attaches to the question, What constitutes a Christian for the purposes of marriage? Is a Christian the same as a Catholic, or does the name include schismatics, while rejecting heretics, or does it include any sort of heretics to whom the Christian name is applied? The unanimous answer of the historic churches to these questions at the present day is that a Christian is one baptized with such baptism as the Church can recognise as valid. He may be a schismatic, or even a heretic, provided that his baptism has been adequately administered. Otherwise he is not recognised as a Christian at all.

What con-
stitutes a
Christian?

Baptism.

It may be well here to recall the limitations of our subject. In this treatise enquiry is being made only into the Divine laws of marriage. Countless regulations, in East and West alike, prohibit every description of mixed marriage as obviously opposed to the highest conception of married unity. But inasmuch as mixed marriages between Catholics and heretics are upon occasion recognised and accounted valid, notwithstanding all such prohibitions, it follows that these prohibitions are held to be of positive or ecclesiastical, and not of Divine, obligation. Accordingly they fall outside the subject of this treatise, which is only concerned to know that by the unanimous consent of Christendom the marriage of two baptized persons, however ecclesiastically prohibited, is never, like marriage with the heathen, essentially inadmissible.

No clear
distinction
in ancient
days.

This clear distinction was, however, never clearly reached in ancient days. It will have been noticed how, in Council after Council, heretics have been classed with heathens in the various prohibitory canons enacted against mixed marriages. The result in the period between Constantine and Justinian appears to have been not so much that marriages with heretics were rendered invalid, as that marriages with heathens were more and more acquiesced in. As has been seen, after the first three centuries such marriages with heathens do not appear to have been commonly treated as essentially null and void and incapable of recognition, till the middle ages. *A fortiori* marriages with heretics, however protested against, would not fail to find acquiescence. With the definite exclusion of the non-Christian as an admissible consort for the Christian, the question of the difference in this matter between the heretic and the heathen first rose into practical importance. There had never been any question that mixed marriages between Catholics and heretics were greatly to be deplored; there was no question that from the earliest times such unions had been abundantly prohibited by ecclesiastical regulation; there was, in other words, no question that they were gravely irregular; but when once they had been effected, were they to be held, like marriages with the heathen, null and void because essentially inadmissible, or were they, with what-

soever imposition of penance, capable of recognition? In fine, was the heretic a Christian or a non-Christian?

The Canonists of the twelfth century are found still con-
fusing heretics and heathens without much heed. Gratian,
following the Councils of Agde and Laodicea, while forbidding
marriages with heretics, is ready to allow them validity if the
heretic will promise to become a "Christian."¹ Bernard of
Pavia concluded that a *fidelis* might not marry a woman who
was a Pagan, a Jewess, or a heretic, and that if he so married,
he was to be separated.² Tancred, similarly classing heretics
with Jews and Pagans, says that if Christians contract mar-
riage with any of these, the marriage is null.³ The *Glossa*
ordinaria to the Decretum—a commentary assigned to the
13th century—remarking on the teaching of Gratian just
cited, adduces the opinion, as held in his day, that though a
heretic was not allowed to contract marriage with a Christian,
yet if he did so contract marriage, the marriage held good, just
as in the case of one who married a person excommunicate.⁴

The
Canonists.

The question cannot be said to have received adequate con-
sideration, till the great schisms of the Reformation period
made the matter of the greatest practical importance. Through-
out the seventeenth century it gave rise to much difference of
opinion, but as regards the attitude of the Latin Church it is
hardly necessary here to do more than quote the declaration
of the Sacred Congregation of the Council, issued in the name
of Benedict XIV. under date of the 4th November, 1741.

"First, so far as relates to marriages celebrated by heretics with
one another in places subject to the dominion of the Federated
States (of the Netherlands), and in which the form prescribed by the
Council of Trent has not been observed; although His Holiness is
not unaware that the Sacred Congregation of the Council has, in
certain particular instances and with regard to the circumstances
then adduced, replied differently and to the effect that such marriages
were invalid: notwithstanding, holding it to be none the less estab-

Benedict
XIV.
A.D. 1741.

¹ Gratian's *Decretum*, c. 28, qu. 1, c. 16.

² Laspeyres, *Bernardi Papiensis Fac. episcopi summa decretalium*, p. 291.
(Freisen, p. 641.)

³ Wunderlich, *Tancredi summa de matrimonio*, p. 44. (Freisen, p. 641.)

⁴ Freisen, p. 642.

lished that nothing has hitherto been defined by the Apostolic See concerning marriages of this character, taken generally and in the mass, while yet a declaration as to what view should be taken of such marriages considered generally is eminently desirable, at once for the counsel of all the faithful who inhabit those regions, and for the averting of many very grave inconveniences: after due study of the matter, and a careful weighing of all the arguments on either side, (His Holiness) declares and decrees that marriages between heretics in the said Federated Provinces of Belgium, as well those contracted up to the present as those which shall hereafter be contracted, are to be accounted as valid, notwithstanding that the form prescribed by the Council of Trent has not been observed in the celebration of them, provided always that no other canonical impediment stand in the way. Further, and consequently, that if it come about that both consorts betake themselves to the bosom of the Catholic Church, they are altogether bound by the same marriage-bond as before, even if their mutual consent be not renewed by them in the presence of the Catholic parish priest; and that, if only one of the parties, whether the man or the woman, be converted, neither can proceed to a second marriage so long as the other is alive.

“With regard to those marriages, which are contracted by Catholics with heretics in the same provinces of Belgium similarly without the form appointed by the Council of Trent, whether a Catholic man marry a woman who is a heretic, or a Catholic woman marry a heretical man, His Holiness is exceedingly grieved that among Catholics there should be persons, who being shamefully demented by a mad affection, fail to abhor from their hearts, and to regard as entirely to be avoided by them, these hateful marriages, which Holy Mother Church has constantly condemned and forbidden; and he greatly commends the zeal of those prelates who make it their care to compel Catholics, by the provision of severe spiritual penalties, not to unite themselves to heretics in this sacrilegious bond. He, accordingly, solemnly and gravely exhorts and warns all bishops, vicars-apostolic, parish priests, missionaries, and all other faithful ministers whomsoever of God and of the Church, that to the utmost of their ability they deter Catholics of either sex from entering upon marriages of this kind to the hurt of their own souls, and that they use their endeavours in every suitable way to turn aside and effectually hinder such marriages. If, however, by chance any marriage of this kind has been already contracted in those parts,

without the observation of the form of the Council of Trent, or if such a marriage should happen to be contracted hereafter (which may God avert), His Holiness declares that a marriage of this kind is to be accounted valid, if there be no other canonical impediment, and that neither of the consorts can in any way enter upon a new marriage under colour that the said form has not been observed, so long as the other consort shall survive."¹

The lines thus laid down by Benedict XIV. for Belgium have been followed by his successors wherever occasion demanded. Mixed marriages with heretics, while in every way discouraged, are accounted valid. Heretics are therefore held to be capable of Christian marriage. The principle is held to apply no less to the Pauline privilege. A heretical partner may not be put away, as being a case under the privilege, on the conversion of the other partner to the Catholic faith. The marriage is already Christian marriage, and therefore indissoluble.²

In the East the same practical results have been everywhere reached, though without the same clearness of authoritative decision. There has been considerable controversy, and the question of mixed marriages with heretics and schismatics occupies much space in Eastern systems of Canon Law, which make a great theoretical difference between heretics and schismatics. In practice it may be said there is no want of readiness in admitting the validity of a marriage where the non-orthodox party has been sufficiently baptized.³

In the English Church the validity of marriages between Churchmen and Nonconformists, or between two Nonconformists, has never been seriously questioned.

Accordingly the unanimous verdict of the historic churches acknowledges those persons as capable of Christian marriage who have been sufficiently baptized.

III. REASON.

The appeal to Reason has been largely anticipated in the preceding pages, either as introduction to or as comment upon

¹ Von Schulte, *Handbuch des Katholischen Eherechts*, pp. 235, sqq.

² On the whole question of baptism as the qualification for Christian marriage see a valuable paper by Cardinal Tarquini, *Ueber das Paulinische Privileg*, in the *Archiv. für Katholisches Kirchenrecht* (Mainz) for 1883, p. 224, sqq.

³ Zhishman, *Das Eherecht der Orientalischen Kirche*, pp. 512-561.

the teaching of Holy Scripture and of Christian history. Some statement of the *rationale* of the subject will not, however, be superfluous.

Mixed marriages too unequal to be admitted.

(a) Essentially.

(b) From difference of conditions.

A special grace supplied to the married convert.

(1) If it be granted that Christian marriage has the nature of a Christian sacrament, and that in the union of two members of the body of Christ there is not only a restoration of the original institution, but a recasting of it in the mould of that membership of the persons in Christ's body, it follows that a union between one who is a member of Christ's body and one who is not is an altogether unequal union. Nor is it reasonable to say that for the Christian partner all the blessedness of Christian marriage may be expected. Marriage is essentially a condition of mutual and reciprocal advantage, not less spiritually than otherwise, and in a mixed marriage of a Christian with a non-Christian its proper character is never attained. Consequently such mixed marriages are essentially inadmissible, their inadmissibility depending not merely upon any differences in the conditions of the marriage accepted by the two parties, but upon the inequality of their *status*, which renders the full character of Christian matrimony unattainable by either. In practice the difference of the conditions of marriage accepted by the Christian and the non-Christian partners, would often be sufficient to invalidate a marriage, quite apart from the essential inadmissibility which results from the difference of *status*. Thus the marriage of a Christian woman with a Musalman man, in which the one accepts the duty of exclusive faithfulness and the other does not, is inadmissible as Christian marriage from want of mutuality. It would be no less inadmissible under similar conditions if both parties were Christians.

(2) Notwithstanding the truth of the statement that mixed marriages between Christians and non-Christians do not attain the proper character of Christian marriage, it has pleased Almighty God, to obviate the inconveniences of separation in the case of converts, to confer a special grace, by which the married convert is enabled to obtain the fulness of the blessing of Christian marriage. That fulness would in the ordinary course have failed at every point where mutual relations came

in. Accordingly the grace is supplied by the sanctifying of the unbelieving partner for the use of the believer. Not holy in his own being, the unbelieving partner is, notwithstanding, enabled to render all his relations with his wife relations having to her that stamp of holiness which is proper to Christian marriage.

(3) The supply of this grace, without which the Christian partner would presumably have been bound to separate from the unbeliever, is not only a justification of continuance, but a requirement that, without some sufficient ground of separation supplied by the unbelieving partner, no separation shall be made. The Christian partner is responsible for welcoming God's willingness to sanctify the union to him in all its mutual relations. Such as the marriage was, it had its share in the original institution, and should be sanctified and continued, rather than set aside and supplanted.

This grace requires the convert to continue the union, if there be no sufficient ground of separation.

(4) While, however, the Christian partner is required, by reason of his responsibility for God's offer of sanctifying grace, to continue the union after baptism, if he reasonably can, the requirement comes to him from that responsibility, and not from the fact that prior to baptism the union has possessed the indissoluble character. It has borne the mark of the Fall; it has probably been entered upon subject to polygamy and divorce; it is certainly not instinct with the holiness of marriage as it is found in the body of Christ; and in dealing with such unions GOD in history has not insisted that they should be treated as indissoluble. Indissolubility alone could neither restore them to the sinlessness of the original institution, nor raise them to the transformed character of holiness which is given to Christian marriage.

But the requirement comes from the grace, and not from the indissolubility of the prior tie.

Essentially, therefore, marriages prior to baptism are to be regarded as soluble.

(5) If, accordingly, the unbeliever is the cause of separation (*χωρίζεται*), which may be understood in the terms of the Western rule—

If there be ground for separation, the convert may marry again.

- (a) If he decline to abide in any case,
- (b) or without contumely of the Creator,
- (c) or without solicitation to grave sin,

separation is open. There is no indissoluble bond, and the offer of sanctifying grace in this case makes no requirement. "A brother or a sister is not bound in such a case."

If the union be continued after baptism, it becomes indissoluble for the Christian.

(6) If the believer, finding the unbeliever willing to abide in all reasonableness, continue the union after his baptism, the union acquires to him, by reason of the special sanctifying grace, the full character of Christian marriage. It is therefore indissoluble. The unbelieving partner may perhaps go, in after years, by reason of the freedom which he has never surrendered, but to the Christian partner Christian marriage once achieved does not admit divorce. The unbelieving partner, sanctified to the Christian partner, is so sanctified for the term of their mutual lives.

Cases not covered by the permission to continue, or not requiring such continuance.

(7) While the special grace of sanctification offered to the married convert requires him to endeavour to continue the union, where the union has the main features of marriage, and may to him at least become holy with all the holiness of Christian marriage, it is obvious that some forms of union recognised by the secular laws as marriages lie altogether outside this provision.

(a) Thus the union of a man with a polyandrous wife, in a Himalayan tribe or among the Nairs, not only need not be continued after his baptism, but may not be so continued, since it would involve the man in the sin of connivance at adultery, and of the *confusio prolis*.

(b) Again, the temporary marriages of the Shia Musulmans, by which a man and a woman may be legally united for a term of twelve months or even less, is not a union which *prima facie* ought to be continued. If the Musulman declares that he has a general intention in the union to renew it indefinitely, and in fact to be faithful for life, it is arguable that the Christian partner should be allowed to continue the union, if the Musulman is willing to renew it without temporary conditions. It is hardly arguable, however, that the Christian could ever in such a case be *required* to continue the union.

(c, d) The case of the (c) polygamous husband, one or more of whose wives is baptized, is more difficult, and may be considered with the partially analogous case of an (d) adulterous

husband. In neither case does anything in the facts prevent the wife from giving the husband a wifely allegiance lifelong and exclusively faithful; and the teaching and practice of the early Church do not regard the wife whose husband is adulterous as guilty of sinful connivance, or as in any way bound to repudiate the marriage. On the other hand, she is at liberty to repudiate him, and when she exercises that right prior to baptism, it appears to carry with it the right of remarriage. There is no indissoluble bond, and continuance of the union is not demanded of the convert. On the other hand, there appears to be no question that a woman may elect to continue her marriage with an adulterous non-Christian husband if she will, and it does not at all appear that she would thereby lose her right of separating from him at some later period on the ground of continued adultery. When, however, she has once carried the marriage into the Christian state, it becomes to her Christian marriage, and is thenceforth indissoluble, though she may afterwards claim separation of life. The case of the wife of a polygamist is to some extent analogous. Indeed, so far as the woman is concerned, it would be simply a particular case of the adultery of the husband, if only the wife had ground for assurance that her wifely rights were superior to those of the other wives. This, however, is exactly the point where the case of the polygamist's wife becomes difficult. Her union was, subject to conditions, always intended to be lifelong and exclusively faithful; but this was not less the case with the other wives. Neither she nor any of the others can lay claim to rights as of the only true wife, where each married under the provisions of a system of law which recognises no such rights of an only true wife. The wife first married accepted polygamy *in posse* as fully as the later wives accepted polygamy in fact. Further, polygamy is so considerable a corruption of the original institution of marriage that there can hardly be doubt that any one of the wives of a polygamist husband, as in the case of an adulterous husband, is entirely within her rights by the Christian rules, if she claims separation from her husband. The fact is present that, under whatsoever sanction of law, he continues his relations with other

women. If, then, on this ground, the wife effect a separation prior to baptism, there is no indissoluble bond to hinder her from marrying again; but if the converted wife desires to abide with her husband, the question whether she is at liberty to do so is one of the gravest difficulty. Neither Holy Scripture nor the Church of the first fifteen centuries of Christianity has any indications as to the particular case. There appears indeed to be little question that a wife who was married while not yet a Christian, to one who might either divorce her, or constrain her to share her wifely rights with others, was not debarred under those circumstances from continuing her union as Christian marriage under the Pauline privilege. Taking this as a premise, it would seem to follow that the wife of an actual polygamist might retain her union not less than the wife of a polygamist *in posse*. This is, in fact, the conclusion arrived at by the Lambeth Conference of 1888. Yet, if this continuance of the relation is open to one wife, there appears to be no sufficient ground to deny the same right of continuance to two or more wives, and it must be owned that a Musulman husband with four Christian wives would somewhat startle Christian feeling. If the case be admissible, it must be because a special sanctifying grace is supplied, which renders the man sanctified to each of the women in all her relations with him as his wife. This, of course, would not imply that in his own life and conversation the man would shew forth sanctity.

Practical
conclusions
on the
whole
survey.

The difficult questions which surround the subject of marriages between the baptized and the unbaptized have in this chapter been referred to the three great sources of all theology; viz., (1) Holy Scripture, (2) the testimony of History, and (3) Reason. It may be of service to close the chapter with a brief recapitulation of the practical conclusions to which the investigation has seemed to lead.

CONCLUSIONS.

1. *All marriages contracted between Christians and non-Christians are essentially null and void.*
2. *Marriages contracted outside Christianity are not essentially indissoluble.*
3. *A married convert to Christianity may continue a union entered upon by him while not a Christian, unless the non-Christian partner act in such a way as to call for separation.*
4. *The non-Christian partner acts so as to call for separation when*
 - (a) *He refuses to abide with the converted partner, or*
 - (b) *He refuses to abide without obtruding grave obstacles of a religious character (=“blasphemy of the Divine name”), or*
 - (c) *He refuses to abide without obtruding grave obstacles of a moral character (=“solicitations to mortal sin”).*
5. *If the unbeliever be thus the cause of separation, the marriage may be dissolved with the effect that the converted partner may marry again.*
6. *If the unbeliever be willing to abide without attempting to cause spiritual or moral injury, the converted partner is under an obligation to continue the union; but this obligation is rather derived from the Divine readiness to grant a special grace of sanctification for the continuance of the union, than from the essentially indissoluble character of such union.*
7. *Since the right to dissolve a marriage contracted outside Christianity is ultimately based upon the dissoluble character of such marriages, the expression of the will of the unbelieving partner, if he be not accessible, may be dispensed with.*
8. *If the unbelieving partner be accessible, every reasonable effort should be made to obtain from him a sufficient expression of his will before the converted partner is permitted to proceed to a second marriage.*

9. *The converted partner who continues his union after baptism continues it as being to him Christian marriage, and therefore indissoluble.*
10. *When a marriage has been thus continued after the baptism of the converted partner, subsequent desertion by the non-Christian partner does not terminate the obligation which binds the Christian partner, but only gives occasion for separation of life.*
11. *When the unbeliever causes separation at or before the baptism of the believer, the indissoluble obligation never exists, and both parties are free to marry again from the time of such separation.*
12. *The permission to continue unions commenced outside Christianity can only be held to apply to the higher forms of such unions ; e.g.,*
 - (a) *A Christian man may not continue a union with a polyandrous woman.*
 - (b) *Temporary marriages may not be continued as such.*
13. *The permission to continue unions commenced outside Christianity may be taken to hold good in some cases, where there is notwithstanding no obligation laid upon the Christian partner to continue such union ; e.g.*
 - (a) *Wives of adulterous husbands may elect to continue the union after their baptism, or they may leave their husbands and marry again.*
 - (b) *Wives of polygamist husbands are similarly at liberty to leave their husbands and marry again, and, according to some authorities, are also at liberty to continue the union.*

CHAPTER IX

OF POLYGAMY

THE present generation has been witness of a controversy in the Anglican Church as to whether it may not be lawful to admit polygamists to Christian baptism without requiring them to forego the practice of polygamy. In the light of our long investigation into the questions of divorce and remarriage such a controversy seems now to be superfluous. If the adultery of the man is fair ground for putting him away, and if the guilty husband so put away may not even remarry, what becomes of polygamy considered as a practice permissible to Christians? Polygamy in the Christian man is simply a form of adultery, rendering the offender liable to be put away by his lawful wife; and even if so put away, he is unable to continue by the Church's sanction the quasi-conjugal relations into which he has entered with any other woman or women. It is not contended by any that a similar concession to that proposed would be possible in the case of female converts from polyandrous tribes in India and elsewhere, and yet it may not unfairly be asked why, if charity require it in the one case, the voice of charity may not be heard in the other? True, the monstrosity of the *confusio prolis* is greater than the monstrosity of the harem; but by either polygamy the sacred unity of the tie, as restored among Christians, is violated; and if charity is to avail to cast down the walls of the sanctuary in the one case, what is to hinder the claims of charity in the other?

Introductory statement.

Polygamy inadmissible to Christians.

In former chapters it was seen (1) how marriage as instituted in the time of man's innocence was monogamous, and

Polygamy
had been
suffered in
a fallen
state
without
added con-
demnation.

(2) how, after the Fall, the practice of polygamy, like some other deflections from the Divine law, was tolerated without any addition of reprobation to that which was written in man's heart and contained in his traditions. Man was in a state of sin, and his heart was hard. He was too without the grace which God gives to His reconciled children for the maintenance of the high requirements of Holy Marriage, and accordingly God suffered the practice of polygamy, neither approving it nor adding to existing condemnations. Monogamy would not render the marriage of the fallen Holy Matrimony, and pending the restoration of Holy Matrimony deflections of less degradation were suffered rather than deflections of more degradation.

I. HOLY SCRIPTURE.

It will be fitting, in the first place, to ask whether Holy Scripture has any indications that the practice of polygamy is permissible to Christians. The answer appears to be that the subject is nowhere directly treated in the New Testament, but as certain passages are cited in the controversy, it is well to consider them.

(i.) 1 *S. Timothy* iii. 2:

δεῖ οὖν τὸν ἐπίσκοπον ἀνεπίληπτον
εἶναι, μιᾶς γυναικὸς ἄνδρα, νηφάλιον,
σώφρονα, κόσμιον, φιλόξενον, διδακτικόν·

A bishop then must be blameless,
the husband of one wife, vigilant,
sober, of good behaviour, given to
hospitality, apt to teach.

Successive,
not con-
current,
marriages.

This passage has been sometimes held to bear on the question of concurrent polygamy. If, indeed, it could be taken to mean that a bishop was only to be the husband of one wife at one time, it would doubtless have the greatest weight in the present argument. As Dr. Pusey remarks: "A rule which forbade to bishops only to have one wife at once, would, in itself, allow other Christians to have more, contrary to the original institution of marriage, and our Lord's express words." "To enact a positive law for a particular class does imply that the rest are free from that law." But is there any evidence which can reasonably be adduced in support of the proposition that what is here meant is that the bishop is not to be a

polygamist? If we examine the context it appears obvious that the requirement that a bishop should be the "husband of one wife" (*μίας γυναικὸς ἄνδρα*) corresponds with the similar requirement in verse 9 that a widow on the church roll should have been the wife of one husband (*ἐρὸς ἁνδρὸς γυνή*). "They are the exact counterpart of each other."¹ As there was no polyandry known in the Roman Empire, or among the Jews, the phrase "the wife of one husband" can only be used of a woman who had been married to but one husband in all. In correspondence with this meaning the phrase the "husband of one wife" must be used of a man who has been married to but one wife in all. The word *γεγονῆα* used of the widow simply denotes that her condition of marriage with one husband has come to an end by the husband's death.²

There is no room for contention as to the interpretation placed on the passage by the discipline of the Church. In East and West alike it was the rule, a rule commonly based upon this text, that those who had been married twice in succession since their baptism should be ineligible for ordination to the priesthood. How entirely the rule would accord with the general feeling on the subject of second marriage, we shall presently be in a position to judge. Again, the comments of ecclesiastical writers on the text we are now considering are nearly unanimous in understanding it to bar two successive marriages. It is not within the scope of this treatise to follow to its sources the subject of clerical digamy, which rather belongs to the accidentals of Holy Orders than to the essentials of Holy Matrimony.³ It will be sufficient to notice here that in the first five centuries of Christian literature only two writers, one of the fourth, the other rather of the fifth century, appear to have adopted the view that the apostle is in the text guarding against concurrent polygamy. Of these two writers one is the heretical Theodore of Mopsuestia, who attacked the practice of the Church in barring the priesthood to the twice-

¹ Dr. Pusey, note N. to Tertullian in the Library of the Fathers (p. 420).

² *Ibid.*

³ Dr. Pusey's note already cited is most valuable on this subject. See also Dr. von Döllinger, *Hippolytus and Callistus*, ch. iii.

married, and was accordingly anxious to remove the significance of the present text; while the other is Theodoret, who is honoured indeed as a father of the Church, but who had to defend himself for consecrating a digamist, one Count Irenaeus, to be Bishop of Tyre. Nor is any attempt made by either of these writers to support the view they uphold, by adducing any instance of polygamy among Christians. They refer simply to the obvious sufferance of polygamy by the Mosaic code.

Summing up then as to the view that the text before us guards against polygamy in the case of the clergy, we note (1) that this interpretation is at variance with the analogies of the context, (2) that it is at variance with the discipline, excluding digamists from the priesthood, which was universal in the early centuries, and which is in fact the authoritative interpretation of the passage by the Church, and (3) that it is at variance with the overwhelming consensus of early Christian writers on the subject.

We accordingly reject the interpretation, and with it the inference which is involved in it, that polygamy was allowed to the lay people.

(ii.) 1 *Corinthians* vii. 2:

Διὰ δὲ τὰς πορνείας ἕκαστος τὴν ἑαυτοῦ γυναῖκα ἔχέτω, καὶ ἑκάστη τὸν ἴδιον ἄνδρα ἔχέτω.

Nevertheless, to avoid fornication, let every man have his own wife, and let every woman have her own husband.

(iii.) *S. Matthew* xix. 5:

καὶ εἶπεν, Ἐνεκεν τούτου καταλείψει ἄνθρωπος τὸν πατέρα καὶ τὴν μητέρα καὶ προσκολληθήσεται τῇ γυναικὶ αὐτοῦ, καὶ ἔσονται οἱ δύο εἰς σὰρκα μίαν; ὥστε οὐκέτι εἰσὶ δύο, ἀλλὰ σὰρξ μία.

And said, For this cause shall a man leave father and mother, and shall cleave to his wife: and they twain shall be one flesh? Wherefore they are no more twain, but one flesh.

(iv.) *Ephesians* v. 23:

Ὅτι ὁ ἀνὴρ ἐστὶ κεφαλὴ τῆς γυναικὸς, ὡς καὶ ὁ Χριστὸς κεφαλὴ τῆς ἐκκλησίας.

For the husband is the head of the wife, even as Christ is the head of the church.

These three passages certainly exclude all thought of polygamy. That every woman should have her own husband, that twain should be one flesh, that the husband is the head of the wife, as Christ is the head of the one Church, are statements which do not travel outside monogamy. But they

hardly amount to argument on the point, as they are general statements, not directly concerned with polygamy, a practice for which no one among Christians would claim more than exceptional sufferance.

On the whole we conclude that the New Testament scriptures are silent, so far as direct references are concerned, on the subject of concurrent polygamy.

II. THE CHURCH IN HISTORY.

In the Christian Church polygamy has never yet found a foothold. The reasons are not far to seek. Of these (a) the first may be said to be that the Church of the early ages was hardly ever seriously confronted with polygamy, and (b) the second, that the question was entirely answered by implication in the received teaching on the subjects (a) of adultery and divorce, and (β) of second marriages.

(a) Of the two systems of non-Christian law with which the early Church had chiefly to reckon in the matter of marriage, the Roman law, it need hardly be said, was entirely free from the recognition of polygamy. It is not indeed to be thence inferred that the moral condition of the Roman Empire was better than that of the Chosen People. It is unnecessary to stain these pages with any detailed references to the awful moral degradation of at least some of the populations under Roman government in the time of the empire. Perhaps, if we knew all, we might be able to say that the toleration accorded to the Jews in the matter of polygamy would have been safer for the populations under Roman sway; and at least the Mosaic regulation of the connexion with slave women was far and away more righteous than the *contubernium* of Rome. But whatever the moral aspect may have been, the Roman law and the Roman customs were alike intolerant of any approach to polygamy. Divorce, promiscuous indulgence, unnatural sin abounded; but polygamy there was none. The Roman law recognised the concubinage of a man with a free woman of inferior position, understanding by concubinage a sort of left-handed marriage, which was avowedly terminable; but it did not even permit this concubinage concurrently with marriage,

The Early Church in History.

The Early Church not confronted with polygamy.

Roman law free from the recognition of polygamy.

nor might a man entertain two legal concubines at the same time.¹ While therefore the subject of divorce was continually bringing Christian teaching into conflict with the secular law, the question of polygamy never arose. Whatsoever the relations which a Roman subject might have entered into, there was for him no law, human or Divine, which permitted him to keep two women as in any sense his wives at one and the same time.

Authorities for these statements may be referred to. As regards the non-recognition of polygamy in general by the Roman law, an enactment of Diocletian and Maximian (A.D. 285) recites, "That no one, who lives under the empire of the Roman name, can have two wives, is plain to all; in that even in the edict of the praetor such men are marked with infamy; and this matter the competent judge will not allow to go unpunished."² So too a law of Valerian and his colleagues (A.D. 258), "Him who had two wives at once, without doubt infamy accompanies."³ That this was the old law of Rome may be farther inferred from the fact which Suetonius mentions, that it was in contemplation to pass a law permitting a plurality of wives to Julius Caesar; a law which would not have been needed if bigamy could otherwise have been legalised.⁴

S. Augustine may suffice as a witness that the Christians understood and accepted this law. In the *De Bono Conjugali* he remarks, "Yea, in our times, and by the custom of Rome, neither is it allowed to take one wife to another, so as to have more than one alive."⁵

Jewish
practice.

The practice of the Jews in the matter of polygamy during the early centuries of the Christian Church is, as has been already noticed, a somewhat obscure subject. While the

¹ Paul. *Sent.* 2, 10, 1. Code v. 26. 1.

² Code v. 5. 2. Neminem, qui sub ditione sit Romani nominis, binas uxores habere posse, vulgo patet, quum et in edicto praetoris hujusmodi viri infamia notati sunt. Quam rem competens judex inultam esse non patietur.

³ Code ix. 9. 18. Eum, qui duas simul habuit uxores, sine dubitatione comitatur infamia.

⁴ Suetonius, *Jul.* c. 52.

⁵ S. Augustine, *De Bono Conjugali*, § 7; nostris quidem jam temporibus ac more Romano, nec superducere, ut amplius habeat quam unam vivam.

recognised commentaries of the Jews never ceased to repeat provisions for the practice of polygamy, the actual customs of the Jewish people at the time of our Lord, and in the early centuries of Christianity, seem to have been hardly touched by it. It is not referred to in the Gospels as an existing custom. Josephus¹ indeed tells us of the polygamy of Herod the Great, who had nine wives, but the case may well have been exceptional; and Justyn Martyr, while upbraiding the rabbis for permitting a man to have four or five wives, does not necessarily imply that he had any knowledge of polygamy as a practice.² The early centuries of Christianity appear to have no one instance in which the case of a polygamous convert is treated, either in the decree of a council or in the writings of a Christian doctor. The Council of Eliberis (between A.D. 306 and 324) concerns itself on several points with the relations of Christians to the large Jewish population which was at that time to be found in Spain, but nowhere does it touch upon the subject of polygamy.

(b) *The answer by implication in the received teaching of the Church.*

(a) *Inferences from the recognised teaching as to adultery and divorce.*

The teaching of Holy Scripture and of Christian tradition on the subject of polygamy is necessarily contained in the teaching which comes to us from these sources on the subject of adultery and divorce.

When our Lord said, "Whosoever shall put away his wife and marry another, committeth adultery against her,"³ it is clear that the guilt of adultery *against the wife* would be as much incurred by the husband if he retained both women as if he put away the first, although indeed it might be said that by retaining the first wife he was at least not the cause of adultery on her part. The conception of adultery as possible *against a*

(a)
Inferences
from
recognised
teaching
as to
adultery
and
divorce.

S. Mark
x. 11.
Adultery
against
a wife.

¹ Josephus, *Antiq. Jud.* xvii. 1. 3.

² S. Justin Martyr, *Dialogus*, Pars ii. 363. . . . τοῖς ἀσυνέτοις καὶ τυφλοῖς διδασκάλοις ὑμῶν· οἵτινες μέχρι νῦν καὶ τέσσαρας καὶ πέντε ἔχειν ὑμᾶς γυναῖκας ἕκαστον συγχωροῦσι.

³ S. Mark x. 11.

woman is unknown to all polygamous codes of law. They are agreed in understanding that adultery on the part of a man is sin with the wife of another man, and that its adulterous character does not belong to it either as against the offender's own wife, or even as against the partner of his sin. Both the guilty parties are regarded as committing adultery against the husband whose property the sinful woman is. The statement of our Lord in S. Mark x. that a man can commit adultery against his wife (ἐπ' αὐτήν) is thus itself exclusive of polygamy.

Hermas.

When Hermas says of the husband who has put away his wife for fornication, "For this cause it is commanded to you both to abide single, both husband and wife (ἐφ' ἑαυτοῖς μένειν, εἴτε ἀνὴρ εἴτε γυνή); because that in such a case there may be penitence," a plurality of wives is not conceived as possible.¹

S. Justin
Martyr.

S. Justin Martyr, when quoting our Lord's teaching on the subject of adultery and divorce, draws this very inference from it. "So then both they who under some human law contract bigamy are sinners in the account of our Teacher, and they who look on a woman to lust after her."²

S. Clement
of
Alexandria.

S. Clement of Alexandria no less certainly excludes polygamy when he says, "It is expressly enacted, 'Thou shall not put away a wife except for some matter of uncleanness'; and it is counted adultery to contract another marriage in the lifetime of either of the separated parties."³

Tertullian.

Tertullian's teaching on adultery and divorce involves the same conclusions as regards polygamy.⁴ In the case of Tertullian his passionate antagonism to second marriages in any shape provides in addition a considerable body of testimony against polygamy, which will be presently alluded to, though doubtless his heterodox attitude goes far to discredit his testimony altogether.

The 47th
Apostolical
Canon.

When the 47th Apostolical Canon cuts off from communion any layman who, "having cast out his own wife, takes another,"

¹ Hermas, *Pastor*, Mandatum iv. (Funk, *Patres Apostolici*, 1887, p. 392.)

² S. Justin Martyr, *Apologia Prima pro Christianis*, § 14, 15. (Migne's Ed. pp. 348, 349.)

³ S. Clement of Alexandria, *Stromata*, ii. 23. (Migne's Ed. p. 1096.)

⁴ Tertullian, *De Monogamia*, § 9; *Ad Marcionem*, lib. iv. c. 34, lib. v. c. 7; *De Patientia*, § 12.

the possibility of his having two wives at once must be considered to be not only passed by, but excluded.¹

We have seen that the Canons of Eliberis decree that communion is not to be accorded even at the last to a Christian woman who has married a catechumen, "if the person marrying her be one who has forsaken a blameless wife, and if she was aware of his having a wife whom he hath forsaken without cause." Here too union with two wives at once is necessarily excluded by implication.² Council of Eliberis.

We have thus glanced at the teaching of the principal authorities prior to Constantine. In excluding remarriage after divorce they *a fortiori* exclude polygamy. The same inference may be obviously drawn in the case of similar testimony throughout the history of the Church. It should be noticed, however, that while polygamy is necessarily excluded by those authorities which forbid remarriage after divorce for adultery, the authorities which would admit such remarriage are no less pronounced in the expression of opinions which leave no room for a plurality of wives.

Thus Lactantius: "As the woman is tied by the bonds of chastity to desire no other, so let the man be holden by the same law, since God hath firmly bound the husband and wife in the frame of one body."³ Lactantius.

So S. Asterius, inveighing against the license of divorce, says that "the law of continence is enacted of God, not for women only, but for men as well: although they, abiding by human lawgivers, who give them leave to be impure, are severe judges and exactors of female chastity, while themselves, with all shamelessness, run wild after many women." To "run wild after many women" is the *nefas horrendum* which condemns the Roman license of divorce. Such license of divorce is monstrous, for it amounts to polygamy.⁴ S. Asterius.

S. Epiphanius, in admitting remarriage after divorce for adultery, expressly guards himself against being understood to sanction bigamy. "Not for him to have two wives at once," S. Epiphanius.

¹ Mansi, tom. i. p. 40.

² *Ibid.* tom. ii. p. 7.

³ Lactantius, *Epitome*, c. lxvi. (alias, c. viii.) (Migne's Ed. tom. i. p. 1080.)

⁴ S. Asterius, *Homily v. on S. Matthew xix.* (Migne's Ed. p. 237.)

the first yet surviving; but if he be cut off from the first, and if (so it chanced) he be lawfully married to a second, him the holy Word compassionates, and the holy Church of GOD."¹

Ambrosiaster.

Ambrosiaster, in maintaining the right of remarriage in the case of a convert whose non-Christian partner has refused to abide, says: "For the affront to the Creator (*contumelia Creatoris*) dissolves the right (*jus*) of marriage as regards him who is left, so that he is not open to accusation, though he be united to another." Except, then, for a sufficient cause, he would be open to accusation if he were united to another.²

In fine nearly the whole of the testimony which can be adduced in the matter of adultery and divorce will be found to have a bearing on the subject of polygamy, and on this subject it is entirely unanimous.

(β) *Inferences from the recognised teaching as to second marriages.*

(β)
Inferences
from the
recognised
teaching as
to second
marriages.

The sense of the early Church on the subject of polygamy is not less obviously to be found in the current teaching on the subject of successive marriages. That teaching is remarkable as being continually characterised by what seems in the present day an extraordinary rigorism. There was a constant tendency in the direction of pronouncing second marriages sinful, a tendency which took dogmatic shape in the teaching of the African Montanists and the Phrygian Novatians. The orthodox writers, while maintaining Christian liberty in the matter, seem to have been anxious to guard against any appearance of unholy laxity. The result for our present purpose is that a succession of authorities are found to have expressed themselves in terms which are simply incompatible either with the permission of polygamy to Christians, or with the admission of converts while maintaining polygamous relations.

The subject of successive marriages does not for its own sake come within the scope of this treatise, which is concerned only with the Divine laws of marriage. As second marriages are now permitted by the consent of the universal Church, and

¹ S. Epiphanius, *Panarion*, lix. cap. 4. (Migne's Ed. tom. i. pp. 1024-5.)

² Ambrosiaster, *In Epist. 1 Cor.* vii. 13. (Migne's Ed. of *S. Ambrose*, tom. ii 2. p. 218.)

the restrictions on third and fourth marriages in the Eastern Church must be held to have only the character of ecclesiastical regulations, there can hardly be said to be now any serious question as to the lawfulness of successive marriages, considered only from the point of view of the Divine prohibition. The authorities here cited are therefore cited only on account of their bearing on the subject of polygamy in the Christian Church.

AUTHORITIES ON SUCCESSIVE MARRIAGES.

HERMAS.

*The Shepherd, Mand. iv.*¹

Ἡρώτητα αὐτὸν πάλιν λέγων· Κύριε, ἐπεὶ ἅπαξ ἀνέχῃ μοι, ἔτι μοι καὶ τοῦτο δῆλωσον. Λέγε, φησὶν. Ἐὰν γυνή, φημί, κύριε, ἢ πάλιν ἀνὴρ τις κοιμηθῇ καὶ γαμήσῃ τις ἐξ αὐτῶν, μήτι ἁμαρτάνει ὁ γαμῶν; Οὐχ ἁμαρτάνει, φησὶν· ἔὰν δὲ ἐφ' ἑαυτῷ μένῃ τις, περισσοτέραν ἑαυτῷ τιμὴν καὶ μεγάλην δόξαν περιποιεῖται πρὸς τὸν κύριον· ἔὰν δὲ καὶ γαμήσῃ, οὐχ ἁμαρτάνει. Τῇρει οὖν τὴν ἀγνείαν καὶ τὴν σεμνότητα καὶ ζήσῃ τῷ θεῷ.

ATHENAGORAS.

See p. 180.

S. IRENAEUS.

*Against Heresies, Bk. iii. c. 17.*²

Miserante Domino nostro Samaritanae illi praevariatrici, quae in uno viro non mansit, sed fornicata est in multis nuptiis.

S. CLEMENT OF ALEXANDRIA.

*Stromata, iii. 1.*³

Ἡμεῖς εἰνονυχίαν μὲν, καὶ οἷς τοῦτο δεδώρηται ὑπὸ Θεοῦ μακαρίζομεν· μονογαμίαν δὲ καὶ τὴν περὶ τὸν ἓνα γάμον σεμνότητα θαυμάζομεν· συμπάσχειν δὲ δεῖν λέγοντες, καὶ ἀλλήλων τὰ βάρη βαστάζειν· μή ποτέ τις δοκῶν καλῶς ἐστάναι, καὶ αὐτὸς πέσῃ. Περὶ δὲ τοῦ δευτέρου γάμου, Εἰ πυροί, φησὶν ὁ Ἀπόστολος, γάμησον.

*Stromata, iii. 12.*⁴

ἀλλ' ὁ αὐτὸς ἀνὴρ καὶ κύριος, παλαιὰ καίνίζων, οὐ πολυγαμίαν ἔτι συγχωρεῖ· (τότε γὰρ ἀπῆγει ὁ Θεὸς, ὅτε αἰξάνεσθαι καὶ πληθύνειν

¹ Funk, *Patres Apostolici* (1887) i. 398.

³ *Ibid.* tom. i. p. 1104.

² Migne's Ed. p. 930.

⁴ *Ibid.* tom. i. p. 1184.

ἐχρῆν) μονογαμίαν δὲ εἰσάγει διὰ παιδοποιίαν καὶ τὴν τοῦ οἴκου κηδεμονίαν, εἰς ἣν βοηθὸς ἐδόθη ἡ γυνή· καὶ εἴ τιμι ὁ Ἀπόστολος δι' ἀκρασίαν καὶ πύρωσιν κατὰ συγγνώμην δευτέρου μεταδίδωσι γάμον· ἐπεὶ καὶ οὗτος οὐχ ἁμαρτάνει μὲν κατὰ Διαθήκην (οὐ γὰρ κεκώλυται πρὸς τοῦ νόμου) οὐ πληροὶ δὲ τῆς κατὰ τὸ Εὐαγγέλιον πολιτείας τὴν κατ' ἐπίτασιν τελειότητα· δόξαν δὲ αὐτῷ οὐράνιαν περιποιεῖ μείνας ἐφ' ἑαυτοῦ, καὶ τὴν διαλυθεῖσαν θανάτῳ συζυγίαν ἄχραντον φυλάσσων, καὶ τῇ οἰκονομίᾳ πειθόμενος εὐαρέστως, καθ' ἣν ἀπερίσπαστος τῆς τοῦ κυρίου γέγονε λειτουργείας.

TERTULLIAN.

De Monogamia, cap. 4.¹

Hoc ipsum demonstratur a nobis, neque novam, neque extraneam esse Monogamiae disciplinam, imo et antiquam et propriam Christianorum, ut Paracletum restitutorem potuis sentias ejus quam institutorem. Quod pertineat ad Antiquitatem, quae potest antiquior forma proferri quam ipse census generis humani? Unam foeminam masculo Deus finxit, una costa ejus decerpta, et utique ex pluribus. Sed et in praefatione ipsius operis: *Non est, inquit, bonum homini solum eum esse: faciamus adjutorium illi.* Adjutores enim dixisset, si pluribus eum uxoribus destinasset. Adjecit et Legem de futuro. Siquidem prophetice dictum est; *Et erunt duo in unam carnem*, non tres neque plures. Caeterum jam non duo si plures. Stetit lex. Denique perseveravit unio conjugii in auctoribus generis ad finem usque, non quia non erant foeminae aliae, sed quia ideo non erant, ne primitiae generis duplici matrimonio contaminarentur. Alioquin si Deus voluisset, esse potuissent: Certe de filiarum suarum numerositate sumpsisset, non minus ex ossibus et ex carne sua habens Evam, si hoc pie fieret. At ubi primum scelus, homicidium, in fratricidio dedicatum, tam dignum secundo loco scelus, non fuit, quam duae nuptiae.

ORIGEN.

Homily xvii. on S. Luke. (Greek not extant.)²

Nunc vero et secundae et tertiae et quartae nuptiae, ut de pluribus taceam, reperiuntur, et non ignoramus quod tale conjugium ejiciet nos de regno Dei.

.

Puto enim monogamum, et virginem, et eum qui in castimonia perseverat, esse de Ecclesia Dei: cum vero qui sit digamus, licet

¹ Migne's Ed. tom. ii. p. 934.

² *Ibid.* tom. iii. p. 1846.

bonam habeat conversationem, et caeteris virtutibus polleat, tamen non esse de Ecclesia et de eo numero, qui non habent rugam aut maculam, aut aliquid istius modi; sed esse de secundo gradu, et de his qui invocant nomen Domini, et qui salvantur quidem in nomine Jesu Christi, nequaquam tamen coronantur ab eo.

COUNCIL OF NEOCAESAREA.

Canon 3.¹

Περὶ τῶν πλείστοις γάμοις περιπιπτόντων, ὁ μὲν χρόνος σαφὴς ὁ ὠρισμένος· ἡ δὲ ἀναστροφὴ καὶ ἡ πίστις αὐτῶν συντέμνει τὸν χρόνον.

Canon 7.

Πρεσβύτερον εἰς γάμοις διγαμούντων μὴ ἐστιῶσθαι· ἐπεὶ μετάνοιαν αἰτοῦντος τοῦ διγάμου, τίς ἔσται ὁ πρεσβύτερος, ὁ διὰ τῆς ἐστιώσεως συγκατατιθέμενος τοῖς γάμοις.

COUNCIL OF ANCYRA.

Canon 19.²

Ὅσοι παρθενίαν ἐπαγγελλόμενοι, ἀθετοῦσι τὴν ἐπαγγελίαν, τὸν τῶν διγάμων ὅρον ἐκπληροῦντες.

COUNCIL OF NICAEA.

Canon 8.³

Περὶ τῶν ὀνομαζόντων μὲν ἑαυτοὺς καθαρούς ποτε, προσερχομένων δὲ τῇ καθολικῇ καὶ ἀποστολικῇ ἐκκλησίᾳ, ἔδοξε τῇ ἀγίᾳ καὶ μεγάλῃ συνόδῳ, ὥστε χειροθετομένους αὐτοὺς, μένειν οὕτως ἐν τῷ κλήρῳ.

Πρὸ πάντων δὲ τοῦτο ὁμολογῆσαι αὐτοὺς ἐγγράφως προσήκει, ὅτι συνθήσονται καὶ ἀκολουθήσουσι τοῖς τῆς καθολικῆς καὶ ἀποστολικῆς ἐκκλησίας δόγμασι· τουτέστι καὶ διγάμοις κοινωνεῖν.

COUNCIL OF LAODICEA.

Canon 1.⁴

Περὶ τοῦ, δεῖν κατὰ τὸν ἐκκλησιαστικὸν κανόνα τοὺς ἐλευθέρως καὶ νομίμως συναφθέντας δευτέροις γάμοις, μὴ λαθρογαμίαν ποιήσαντας, ὀλίγον χρόνον παρελθόντος, καὶ σχολασάντων ταῖς προσευχαῖς καὶ νηστεαῖς, κατὰ συγγνώμην ἀποδίδεσθαι αὐτοῖς τὴν κοινωνίαν ὥρισαμην.

¹ Mansi, tom. ii. p. 542.² *Ibid.* p. 520.³ *Ibid.* p. 672.⁴ *Ibid.* p. 563.

S. BASIL.

*Epistle 188. To Amphilochius.*¹*Canon 4.*

Περὶ τριγάμων καὶ πολυγάμων τὸν αὐτὸν ὥρισαν κανόνα, ὃν καὶ ἐπὶ τῶν διγάμων, ἀναλόγως· ἐνιαυτὸν μὲν γὰρ ἐπὶ τῶν διγάμων, ἄλλοι δὲ δύο ἔτη. Τοὺς δὲ τριγάμους ἐν τρισὶ καὶ τέταρσι πολλάκις ἔτεσιν ἀφορίζουσιν. Ὀνομάζουσι δὲ τὸ τοιοῦτον οὐκ ἔτι γάμον, ἀλλὰ πολυγαμίαν, μᾶλλον δὲ πορνείαν κεκολασμένην. Διὸ καὶ ὁ κυρίως τῇ Σαμαρείτιδι πέντε ἄνδρας διαμειψάσῃ, Ὅν νῦν, φησὶν, ἔχεις, οὐκ ἔστι σου ἀνὴρ· ὡς οὐκέτι ἀξίῳ ὄντων τῶν ὑπερεκπεσόντων τοῦ μέτρου τῆς διγαμίας τῷ τοῦ ἀνδρὸς ἢ τῆς γυναικὸς καλεῖσθαι προσρήματι. Συνήθειαν δὲ κατελάβομεν ἐπὶ τῶν τριγάμων πενταετίας ἀφορισμόν· οὐκ ἀπὸ κανόνων, ἀλλ' ἀπὸ τῆς τῶν προειληφόντων ἀκολουθίας. Δεῖ δὲ μὴ πάντῃ αὐτοὺς ἀπείργειν τῆς Ἐκκλησίας, ἀλλ' ἀκροάσεως αὐτοὺς ἀξιοῦν ἐν δύο που ἔτεσιν ἢ τρισί· καὶ μετὰ ταῦτα ἐπιτρέπειν συστήκειν μὲν, τῆς δὲ κοινωνίας τοῦ ἀγαθοῦ ἀπέχεσθαι, καὶ οὕτως ἐπιδειξαμένους καρπὸν τινα μετανοίας ἀποκαθιστᾶν τῷ τόπῳ τῆς κοινωνίας.

*Epistle 199. To Amphilochius.*²*Canon 41.*

Ἡ ἐν τῇ χηρείᾳ ἑαυτῆς ἐξουσίαν ἔχουσα ἀνδρὶ συνοικεῖν ἀνέγκλητος, εἰ μηδεὶς ἐστὶν ὁ διασπῶν τὸ συνοικέσιον· τοῦ Ἀποστόλου εἰπόντος· Ἐὰν δὲ ἀποθάνῃ ὁ ἀνὴρ, ἐλευθέρα ἐστίν, ᾧ θέλει, γαμηθῆναι· μόνον ἐν κυρίῳ.

*Canon 50.*³

Τριγαμίας νόμος οὐκ ἔστιν. Ὡστε νόμῳ γάμος τρίτος οὐκ ἄγεται. Τὰ μέντοι τοιαῦτα ὡς ῥυπάσματα τῆς Ἐκκλησίας ὁρῶμεν· δημοσίαις δὲ καταδίκαις οὐχ ὑποβάλλομεν, ὡς τῆς ἀνειμένης πορνείας αἰρετώτερα.

*Epistle 217. To Amphilochius.**Canon 80.*

Τὴν δὲ πολυγαμίαν οἱ πατέρες ἀπεσιώπησαν, ὡς κτηνώδη καὶ παντελὺς ἀλλοτρίαν τοῦ γένους τῶν ἀνθρώπων. Ἡμῖν δὲ παρίσταται πλέον τι πορνείας εἶναι τὸ ἀμάρτημα. Διὸ ἔυλογον τοὺς τοιούτους ὑποβάλλεσθαι τοῖς κανόσι· δηλονότι ἐνιαυτὸν προσκλαύσαντας καὶ ἐν τρισὶν ὑποπεσόντας οὕτω δεκτοὺς εἶναι.

¹ Migne's Ed. tom. iv. p. 673.² *Ibid.* p. 729.³ *Ibid.* p. 732.

S. CYRIL OF JERUSALEM.

Catechetical Lectures iv. c. 26.¹

Καὶ οἱ μονόγαμοι δὲ, τοὺς δευτέρῳ γάμῳ συμπεριενεχθέντας μὴ ἀποδοκιμαζέτωσαν· καλὸν μὲν γὰρ ἡ ἐγκράτεια καὶ θαυμάσιον· συγγνωστὸν δὲ καὶ τῷ δευτέρῳ γάμῳ προσελθεῖν, ἵνα μὴ πορνείσωσιν οἱ ἀσθενεῖς.

S. GREGORY NYSSEN.

*Epistle 2. Of those who go (on pilgrimage) to Jerusalem.*²

Ἐπειτα εἰ καὶ ἦν πλέων ἡ χάρις ἐν τοῖς Ἱεροσόλυμα τόποις, οὐκ ἂν ἐπεχωρίαζε τοῖς ἐκεῖ ζῶσιν ἡ ἁμαρτία. Νῦν μὲν τοι οὐκ ἔστιν ἀκαθαρσίας εἶδος, ὃ μὴ τολμᾶται παρ' αὐτοῖς. Καὶ πονηρίαι, καὶ μοιχεῖαι, καὶ κλοπαί, καὶ εἰδωλολατρεῖαι, καὶ φαρμακεῖαι, καὶ φθόνοι, καὶ φόνοι, καὶ μάλιστά γε τὸ τοιοῦτον ἐπιχωριάζει κακὸν, ὥστε μηδαμοῦ τοιαύτην ἐτοιμότητα εἶναι πρὸς τὸ φονεῖν, ὅσον ἐν τοῖς τόποις ἐκείνοις, θηρίων δίκην τῷ αἵματι τῶν ὁμοφύλων ἐπιτρεχόντων ἀλλήλων, ψυχροῦ κέρδους χάριν.

S. EPIPHANIUS.

Against Heresies, Bk. II. Haer. 48, c. 9.³

Τὴν δὲ μονογαμίαν τιμᾷ, εἰ καὶ μάλιστα τὰ χαρίσματα τῆς ἱερωσύνης διὰ τῶν ἀπὸ μονογαμίας ἐγκρατευσάμενων, καὶ τῶν ἐν παρθενίᾳ διατελούντων κοσμήσας προετύπου, ὡς καὶ οἱ αὐτοῦ ἀπόστολοι τὸν ἐκκλησιαστικὸν κανόνα τῆς ἱερωσύνης ἐντάκτως καὶ ὁσίως διετάξαντο. εἰ δέ τις κατὰ ἀσθένειαν ἐπιδηθείη μετὰ τὴν τελευτὴν τῆς ἰδίας γαμετῆς συναφθῆναι δευτέρῳ γάμῳ, οὐκ ἀπαγορεύει τοῦτο ὁ κανὼν τῆς ἀληθείας, τούτεστιν τὸν μὴ ὄντα ἱερέα. Οὗτοι δὲ κωλύουσι κατὰ εἰρημένον, κωλιόντων γαμεῖν. Ἐκβάλλουσι γὰρ τὸν δευτέρῳ γάμῳ συναφθέντα, καὶ ἀναγκάζουσι, μὴ δευτέρῳ γάμῳ συνάπτεσθαι· ἡμεῖς δὲ οὐκ ἀνάγκην ἐπιτιθέαμεν· ἀλλὰ παραινόμεν μετὰ συμβουλίας ἀγαθῆς προτρεπόμενοι τὸν δυνάμενον, οὐκ ἀνάγκην δὲ ἐπιτιθέαμεν τῷ μὴ δυναμένῳ, ἀλλὰ οὐκ ἐκβάλλομεν αὐτὸν ἀπὸ τῆς ζωῆς.

Bk. II. Haer. 59.⁴

Ἐξεστί δὲ τῷ λαῷ δι' ἀσθένειαν διαβαστάζεσθαι, καὶ μὴ δυνηθέντας ἐπὶ τῇ πρώτῃ γαμετῇ στήναι, δευτέρᾳ μετὰ θάνατον τῆς πρώτης συναφθῆναι. Καὶ ὁ μὲν μίαν ἐσχληχῶς ἐν ἐπαίνῳ μείζονι καὶ τιμῇ παρὰ πᾶσιν ἐκκλησιαζομένοις ἐννέπάρχει· ὁ δὲ μὴ δυνηθεὶς τῇ μιᾷ ἀρκεσθῆναι τελευτησάσῃ ἕνεκέν τινος προφάσεως, πορνείας ἢ μοιχείας, ἢ κακῆς

¹ Migne's Ed. p. 488.² *Ibid.* tom. iii. p. 1012.³ *Ibid.* tom. i. p. 868.⁴ *Ibid.* tom. ii. p. 1024.

αἰτίας χωρισμοῦ γενομένου, συναφθέντα δευτέρα γυναικί, ἣ γυνὴ δευτέρῳ ἀνδρὶ, οὐκ αἰτιᾶται ὁ θεὸς λόγος, οὐδὲ ἀπὸ τῆς Ἐκκλησίας καὶ τῆς ζωῆς ἀποκηρύττει, ἀλλὰ διαβαστάζει διὰ τὸ ἀσθενές· οὐχ ἵνα δύο γυναῖκας ἐπὶ τὸ αὐτὸ σχῇ ἔτι περιούσης τῆς μιᾶς, ἀλλ' ἀπὸ μιᾶς ἀποσχεθεὶς, δευτέρα, εἰ τύχοιεν, νόμῳ συναφθῇναι. Ἐλεεῖ τοῦτον ὁ ἅγιος λόγος καὶ ἡ ἁγία Θεοῦ Ἐκκλησία· μάλιστα εἰ τυγχάνει ὁ τοιοῦτος τὰ ἄλλα εὐλαβῆς, καὶ κατὰ νόμον Θεοῦ πολιτευόμενος.

S. CHRYSOSTOM.

*In illud, Vidua eligatur, etc.*¹

Ὡςπερ οὖν καλὸν μὲν ὁ γάμος, κρείσσων δὲ ἡ παρθενία· οὕτω καλὸν μὲν καὶ ὁ δεύτερος γάμος, κρείσσων δὲ αὐτοῦ ὁ πρῶτος καὶ μόνος. Οὐ τοίνυν ἐκβάλλομεν δεύτερον γάμον, οὐδὲ νομοθετοῦμεν ταῦτα, ἀλλὰ παραινοῦμεν, εἴ τις δύναιτο σωφρονεῖν, ἐπὶ τῷ προτέρῳ μένειν.

*On 2 Timothy c. iii. Hom. VII.*²

Αἱ γυναῖκες ἀκουέτωσαν (μάλιστα γὰρ διὰ τοῦτο εἶπον πρὸς ἀπελθόντας) αἱ δευτέραις ὁμιλοῦσαι γάμοις, καὶ τὴν εὐνήν διαφθείρουσαι τῶν τετελεστηκότος, αἱ στέρξασαι τὸν πρότερον. Οὐκ ἀπαγορεύων τὸν δεύτερον γάμον, οὐδὲ ἀκόλαστον εἶναι λέγων, ταῦτά φημί· οὐ γὰρ ἀφίησί με ὁ Παῦλος, χαλινὸν ἐπιτιθεῖς μου τῷ στόματι, καὶ λέγων ταῖς γυναῖξιν, Ἐὰν δὲ καὶ γήμῃ, οὐχ ἥμαρτεν. Ἀλλ' ἴδωμεν καὶ τὸ ἐξῆς· Μακαριωτέρα δέ ἐστιν, ἐὰν οὕτω μένῃ· πολλὰ τοῦτο βέλτιον ἐκείνου.

*In Epistolam ad Titum, cap. i. Hom. II.*³

Τίνος ἕνεκεν καὶ τὸν τοιοῦτον εἰς μέσον παράγει· Ἐπιστομίζει τοὺς αἵρετικούς τοὺς τὸν γάμον διαβάλλοντας, δεικνὺς ὅτι τὸ πρᾶγμα οὐκ ἔστιν ἐναγές, ἀλλ' οὕτω τίμιον, ὥς μετ' αὐτοῦ δύνασθαι καὶ ἐπὶ τὸν ἅγιον ἀναβαίνειν θρόνον· ἐν ταυτῷ δὲ καὶ τοὺς ἀσελγείς κολάζων, καὶ οὐκ ἀφιεῖς μετὰ δευτέρου γάμου τὴν ἀρχὴν ἐγχειρίζεσθαι ταύτην. Ὁ γὰρ πρὸς τὴν ἀπελθοῦσαν μηδεμίαν φυλάξας εὐνοίαν, πῶς ἂν οὗτος γένοιτο προστάτης καλός; τίνα δὲ οὐκ ἂν ὑποσταίῃ κατηγορίαν; Ἴστε γὰρ ἅπαντες, ἴστε ὅτι εἰ μὴ κεκώλυται παρὰ τῶν νόμων τὸ δευτέροις ὁμιλεῖν γάμοις, ἀλλ' ὅμως πολλὰς ἔχει τὸ πρᾶγμα κατηγορίας.

S. JEROME.

*Ep. 79. To Salvina.*⁴

Et cur indulserit, statim subjecit: *Jam quaedam declinaverunt post Satanam. Ex quo intelligimus, illum non stantibus coronam, sed*

¹ Migne's Ed. tom. iii. p. 325.

² *Ibid.* tom. xi. p. 641.

³ *Ibid.* tom. xi. p. 671.

⁴ *Ibid.* tom. i. p. 732.

jacentibus manum porrigere. Vide qualia sint secunda matrimonia, quae lupanaribus praeferuntur, *quia declinaverunt quaedam post Satanam*. Ideo adolescentula vidua, quae se non potest continere, vel non vult, maritum potius accipiat, quam diabolum.

*Epistle 123. To Ageruchia.*¹

Aliud est quod vult Apostolus: aliud quod cogitur velle. Ut concedat secunda matrimonia meae est incontinentiae, non illius voluntatis. Vult omnes esse sicut seipsum, ut ea cogitare quae Dei sunt, et solutos nequaquam ultra alligari. Sed si labentes, per incontinentiam ad barathrum stupri viderit pervenire; digamiae porrigit manum, ut cum una magis, quam cum pluribus volutentur.

*Ep. 41. To Marcella.*²

Nos secundas nuptias non tam appetimus, quam concedimus, Paulo iubente, ut viduae adolescentulae nubant: illi in tantum putant scelerata conjugia iterata, ut quicumque hoc fecerit, adulter habeatur.

*On the Epistle to Titus, c. i.*³

Quod autem ait, *unius uxoris vir*, sic intelligere debemus: ut non omnem monogamum digamo putemus esse meliorem; sed quo is possit ad monogamiam et continentiam cohortari, qui sui exemplum praeferat in docendo. Esto quippe aliquem adolescentulum conjugem perdidisse, et carnis necessitate superatum, accepisse uxorem secundam, quam et ipsam statim amiserit, et deinceps vixerit continenter; alium vero usque ad senectam habuisse matrimonium, et uxoris usum, ut plerique existimant felicitatem, nunquam a carnis opere cessasse: quis vobis e duobus videtur esse melior, pudicitior, continentior? Utique ille qui infelix etiam in secundo matrimonio fuit, et postea pudice, et sancte conversatus est, et non is qui ab uxoris amplexu nec senili est separatus aetate. Non sibi ergo applaudat, quicumque quasi monogamus eligitur, quod omni digamo sit melior, cum in eo magis sit electa felicitas, quam voluntas.

S. AMBROSE.

*De viduis, c. xi.*⁴

Quod tamen pro consilio dicimus, non pro praecepto imperamus, provocantes potius viduam, quam ligantes; neque enim prohibemus secundas nuptias, sed non suademus. Alia est enim infirmitatis

¹ Migne's Ed. tom. i. p. 1050.

² *Ibid.* tom. i. p. 475.

³ *Ibid.* tom. vii. p. 564.

⁴ *Ibid.* tom. ii. p. 254.

contemplatio, alia gratia castitatis. Plus dico, non prohibemus secundas nuptias, sed non probamus saepe repetitas; neque enim expedit quidquid licet: *Omnia mihi licent*, dicit Apostolus, *sed non omnia sunt utilia*. Et vinum bibere licet, sed plurimum non decet.

AMBROSIASTER.

*On the first Epistle to the Corinthians.*¹

Beatior autem erit, si sic permanserit, secundum meum consilium.

Cum dicit superius, *nubat*, lege loquitur naturali; quamquam a Deo primae nuptiae sint, secundae vero permissae sunt. Denique primae nuptiae sub benedictione Dei celebrantur sublimiter: secundae autem etiam in praesenti carent gloria; concessae sunt autem propter incontinentiam: et quia solent viduarum juniores incurrere: ac per hoc concedit secundas.

S. AUGUSTINE.

De Bono Viduitatis, cap. iv.²

. . . Satis ostendit beatam esse in Domino etiam post mortem viri iterum nubentem fidelem, sed in eodem Domino viduam beatiorē: hoc est, ut Scripturarum non tantum verbis, verum etiam exemplis loquar, beatam esse Ruth, sed Annam beatiorē. Quapropter hoc primum oportet ut noveris, bono quod elegisti non damnari secundas nuptias, sed inferius honorari. Nam sicut bonum sanctae virginitatis, quod elegit filia tua, non damnat unas nuptias tuas; sic nec viduitas tua, cujusquam secundas. Hinc enim maxime Cataphrygarum ac Novatianorum haereses tumuerunt, quas buccis sonantibus, non sapientibus, etiam Tertullianus inflavit, dum secundas nuptias tanquam illicitas maledico dente concidit, quas omnino licitas Apostolus sobria mente concedit. Ab hac sanitate doctrinae, nullius indocti, nullius docti disputatione movearis.

STATUTA ECCLESIAE ANTIQUA.³

Quaerendum etiam ab eo. . . .

Si nuptias non improbet, si secunda matrimonia non damnet.

¹ Migne's S. Ambrose, tom. ii. p. 226.

² Migne's Ed. tom. vi. p. 433.

³ In Ballerini's S. Leo. (Migne's Ed. tom. iii. p. 880.)

S. AMPHILOCHIUS, Bishop of Iconium.¹

Oratio in Domini occursum.

"Οὕτως κρίματος ἀξία, ἢ τὴν μνήμην συνθάψαι τῷ θεοζεύκῳ συζύγῳ, καὶ μάλιστα τέκνον, ἢ τέκνων παρόντων· διὸ καὶ ὁ νόμος τοῦ γάμου πεφυτοῦργηται· εἰ δὲ μὴ πρόσεστι τῇ νέᾳ χήρᾳ τέκνον, εἰκὸς αὐτὴν ἐπὶ δεύτερον γάμον ὁρμᾶν τῷ ἔρωτι τῆς φιλοτεκνίας νυττομένην· ἐπειδὴν καὶ τοῦτο παραινῶν ὁ μακάριος Παῦλος ἔλεγεν· βούλομαι νεωτέρας χήρας γαμεῖν·

SOCRATES.

Ecclesiastical History, Bk. v. c. 22.²

Οἱ Ναυατιανοὶ οἱ περὶ Φρυγίαν, διγάμους οὐ δέχονται. Οἱ δὲ ἐν τῇ Κωνσταντίνου πόλει, οὔτε φανερώς δέχονται, οὔτε φανερώς ἐκβάλλουσι.

In the *Shepherd* of Hermas the question is asked whether a Hermas. person who marries a second time after the death of the first partner sins by so doing. The reply is, "He sinneth not; but if any remain by himself he procureth to himself more abundant honour and great glory with the Lord; yet if he marry, he sinneth not."³ Here then already, in the first or second century, we have an expression of the view which commended itself generally to the Church of the following three centuries, that it was lawful indeed to marry a second time, but that such second marriages were on a lower plane than first marriages, and rather permitted than approved.

In Athenagoras, as has been noticed elsewhere, we have the Athenagoras. first example of a Christian writer who holds that second marriages are distinctly unlawful. To marry a second time is *εὐπρεπὴς μοιχεία*, reputable adultery.⁴

S. Irenaeus, the venerated bishop of Lyons, is a truer representative of the mind of the Church of the second century. Yet even he does not scruple to say of the Samaritan woman with whom our Lord spoke at the well, that she "did not remain *in uno viro*," satisfied with one husband, "but was guilty of fornication in many nuptials." It may be indeed

¹ Opp. ed. Comibefis. Paris, 1644.

² Migne's Ed. p. 641.

³ Hermas, *Pastor*, Mand. iv. (Funk, *Patres Apostolici*, i. 398.)

⁴ Athenagoras, *Legatio pro Christianis*, § 33.

that S. Irenaeus read the narrative as probably implying rather the recurrence of divorce and subsequent remarriage, than merely of marriage following death.¹

S. Clement
of
Alexandria.

S. Clement of Alexandria (c. A.D. 200) in the *Stromata* gives brief expression to what seems to have been the general view as to the three states of (1) single life, (2) monogamy, or marriage with one partner not followed by subsequent marriage with another partner, and (3) second marriage. "We hold to be blessed the unmarried life, and those to whom this has been given by GOD; and we admire monogamy and the dignity (? chastity, *σεμνότης*) which surrounds the single marriage, saying that it is necessary that there should be mutual sympathy and the bearing of one another's burdens, lest at any time any thinking that he standeth bravely, even he should fall. But concerning second marriage, the apostle says, 'If thou burn, marry.'"²

In another place he says that the apostle "on account of incontinence and the burning (of concupiscence) concedes second marriage by way of indulgence."³ One who so marries does not indeed sin, but neither "does he fulfil the high-wrought (*κατ' ἐπίτασιν*—from *ἐπιτείνω* to stretch out) perfection of the polity which is according to the gospel."

Tertullian.

Tertullian is deplorably identified in this matter with the exaggerated views of the Montanists. To him only one marriage can ever be according to GOD's holy ordinance. Second marriage is sin. A whole treatise, the *De Monogamia*, is devoted to the support of this view, which need hardly be further dwelt upon. The Church only knows it to condemn it. The treatise is cited in this place with a view to its bearing on polygamy, and it is sufficiently clear that neither the chary toleration accorded to second marriages by Hermas and S. Clement of Alexandria, nor the trenchant condemnation of Athenagoras and Tertullian, was likely to generate an atmosphere in which concurrent polygamy could find a place.

¹ S. Irenaeus, *Against Heresies*, Bk. iii. c. 17. (Migne's Ed. p. 930.)

² S. Clement of Alexandria, *Stromata* iii. 1. (Migne's Ed. tom. i. p. 1104.)

³ *Ibid.* *Stromata* iii. 12. (Migne's Ed. tom. i. p. 1184.)

The words *monogamia* and *polygamia* as used by early Christian writers require attention. *Monogamia* is not with Tertullian or with S. Jerome what modern writers mean by monogamy, that is to say, the restriction of conjugal relations to one partner at a time, but it is the restriction of such relations to one partner for the whole term of life. Consequently as antitheses of *monogamus* are *bigamus*,¹ the husband of two wives in succession, or *trigamus*, the husband of three wives in succession. Beyond this marriages are classed under the general head of polygamy, *polygamia*, the marrying of many wives. *Polygamia* is thus commonly used as the complete antithesis of *monogamia*; it is the marrying of many wives in succession, as opposed to the being content with one marriage for the whole term of life. Sometimes, however, *polygamia* is used to denote marriages to many wives at one and the same time, according to the practice of Eastern nations; but in this sense *monogamia* does not appear to be its counterpart. *Monogamia* in Greek and Latin writers is a marriage which is not followed by any second marriage after the death of the first partner.

Origen goes so far as to say that repeated marriage "will cast us out from the kingdom of God," but he at once explains the sense in which he uses this expression. "For I think that a monogamist, and a virgin, and he who perseveres in chastity are of the Church of God (de ecclesia Dei); but that he who is a digamist, albeit his conversation be honest, and he excel in virtues other than chastity, is yet not of the Church and of the number of those who have not 'spot or wrinkle or any such thing'; but that he is of the second degree (de secundo gradu), and of those who call upon the name of the Lord, and who are saved indeed in the name of Jesus Christ, yet are in no wise crowned by Him."²

The Council of Neocaesarea (c. A.D. 315), in its 3rd Canon, says of those who have been several times married (*πλείστοις γάμοις περιπιπτόντων*) that the period of penitence assigned is

¹ Though *bigamus* is also used of offenders by concurrent bigamy.

² Origen, *Homily xvii. on S. Luke*.

well known, but that the repentance and faith of such persons may avail to shorten the period.¹ In its 7th Canon the Council forbids a presbyter to take part in the marriage festivities of digamists.

**Council of
Ancyra.**

The Council of Ancyra (A.D. 314) has a remarkable Canon,² which lays down that persons who have promised virginity, and then put aside their promise (*τὴν ἐπαγγελίαν*), are to fulfil the term of penance assigned for digamists.

**Council of
Nicaea.**

The great Council of Nicaea (A.D. 325), the first of the general councils, rules that of those "who call themselves Kathari (the Phrygian Novatians), when they come over to the Catholic and Apostolic Church," the ordained are to be received among the clergy, but that "before all it is seemly that they should acknowledge this in writing, that they will observe and follow the decisions of the Catholic and Apostolic Church; that is to say, that they will communicate even with digamists."³

The 1st Canon of Laodicea (A.D. 341 ?) rules that second marriages may be condoned after a brief period of prayer and fasting.⁴

**Council of
Laodicea.**

The early Councils of the fourth century are thus agreed in regarding the permission to contract a second marriage as no better than a concession to infirmity. Those who avail themselves of it are held to have no honour, and to be not even free from blame; so that a period of penance is exacted from them as the condition of their re-admission to communion. This is the deliberate practice of the fourth century; and it may be reasonably asked if, in the light of such views and of such a practice, it is possible even to suppose that polygamists should have been suffered in the Church, and never a word said.

S. Basil.

In the *Canonical Letters* of S. Basil there are several "Canons" bearing on the subject. Digamists, according to an earlier Canon quoted,⁵ are penitents for the space of one year. In the case of trigamists the practice is stated to have

¹ Mansi, tom. ii. p. 542.

² Canon 19. (Mansi, tom. ii. p. 520.)

³ Mansi, tom. ii. p. 672.

⁴ *Ibid.* p. 563.

⁵ One of the Apostolic Canons.

varied from two to five years of penitence. "They name such a connexion no longer marriage, but polygamy, or rather limited fornication." S. Basil is of opinion that it is not desirable to altogether exclude these trigamists from the Church while they are doing penance, that is to say, to class them among the Mourners outside the door, but rather that they should be held worthy of a place among the *audientes* for two or three years, and then pass a year among the *consistentes*. After that they would be restored to communion.¹

In Canon 41, following S. Paul's permission, he says a widow may marry without blame (*ἀνέγκλητος*).² In Canon 50 he says that third marriages are outside law.³ "We look upon such as the contaminations (*ρυνάσματα*) of the Church; but we do not subject them to public condemnation, inasmuch as they are better than unrestricted fornication."

The 80th Canon of S. Basil is one of much interest on the subject of polygamy. It has been constantly quoted as referring to polygamy in the modern sense; that is to say, to marriage with several wives at the same time. The Canon runs as follows: "The Fathers passed by polygamy in silence as being brutal (*κτηνώδη*), and entirely foreign to the race of man. And to us it appears to be in some sort a greater sin than fornication. Wherefore it is reasonable that such should be subjected to the Canons; that is to say that, having been Mourners for one year, and *substrati* for three years, they should thus be receivable."⁴

Zonaras and Balsamon, the two most received commentators on the Canons in the Eastern Church, are agreed in understanding that by polygamy S. Basil here refers to marriages beyond the third; so that a fourth or subsequent marriage comes under the head of polygamy. This explanation fairly satisfies the difficulties of the Canon. The word *polygamy* can hardly here refer to trigamy, as the Benedictine editors surmise, although in the 4th Canon S. Basil had spoken of third

¹ S. Basil, *Epist.* 188, *Canon* 4. (Migne's Ed. tom. iv. p. 673.)

² *Ibid.* *Epist.* 199, *Canon* 41. (Migne's Ed. tom. iv. p. 729.)

³ *Ibid.* *Canon* 50. (Migne's Ed. tom. iv. p. 732.)

⁴ *Ibid.* *Epist.* 217, *Canon* 80. (Migne's Ed. tom. iv. p. 804.)

marriages as deserving the name of polygamy. In that Canon trigamy had already been dealt with, and in a much milder fashion than here. For trigamy two or three years were to be passed among the *audientes*, and one among the *consistentes*. For *polygamy* one year is to be passed among the Mourners, three years among the *substrati*, and then the penitents are to be receivable (*δεκτοὺς*), not, that is to say, to communion, but to the final year among the *consistentes*. The penance of *polygamy* therefore covered five years, of which four were spent in the two lowest grades.

Hefele, in an interesting article, *On Rigorism in the life and views of the ancient Christians*, is inclined to understand the polygamy of the 80th Canon as polygamy in the modern sense, or the having several wives at one time.¹ But in view of the facts that (1) the Eastern Church has always understood S. Basil to be referring to successive polygamy, that (2) no single instance of concurrent polygamy has been adduced from any part of the Church, and (3) that bigamy following on desertion of the first wife is visited with seven years of penance in the 77th Canon, whereas the penance here assigned for polygamy is for five years only, it does not appear probable that many scholars will agree with Hefele in the matter.

We conclude that S. Basil has nothing to say to polygamy in the modern sense, but, from his severe provisions for those who had contracted successive marriages, it may be inferred with moral certainty that concurrent polygamy would have been altogether abhorrent to him. Such polygamy would have been to him at least as bestial (*κτηνώδη*) as were repeated marriages.

S. Cyril of
Jerusalem.

S. Cyril of Jerusalem is remarkable as representing the great mother church of Jewish Christianity, where, if anywhere, all permissible Jewish tradition would be respected, guarded, and maintained. Probably born in Jerusalem about A.D. 315, he exercised his ministry in the Holy City, first as presbyter, and afterwards as bishop. His *Catechetical Lectures*, by which he is best known, appear to have been delivered about A.D. 347,

¹ Hefele, *Ueber den Rigorismus in dem Leben und den Ansichten der alten Christen*, in the Tübing. Theol. Quartal-Schrift, 1841, pp. 375 sqq.

while he was yet a simple priest. In them he says that "the once married are not to despise those who are involved in second marriages, for continence is beautiful and admirable, but it is pardonable to proceed to second marriage, in order that the weak may not commit fornication."¹ It does not appear, therefore, that S. Cyril had any more indulgence even for the repetition of marriage than was the case with his contemporaries elsewhere.

It is noteworthy that we have from the pen of S. Gregory Nyssen a dark and painful description of the moral degradation of the Christians of Jerusalem at the time of his visit to the Holy City, a visit which was made in answer to an appeal by S. Cyril to the Council of Antioch (A.D. 379) on the subject of the irregularities of his flock. S. Gregory tells us that the city abounded in "wickednesses, and adulteries, and thefts, and idolatries, and poisonings, and envies, and murders." His line of argument is to dissuade from pilgrimage to Jerusalem on the ground that if there were any higher sanctity in the place itself, such sanctity would be shewn in the lives of the inhabitants; whereas the contrary was painfully obvious. If, therefore, a polygamy had been suffered in Jerusalem, which was alien to the practice of the purely Gentile Churches, an allusion to it would have been entirely apposite; but S. Gregory, like S. Cyril, never hints at the existence of such polygamy.²

S. Epiphanius says in his work against Heresies (A.D. 374–376) that "it may be tolerated in the laity by reason of their weakness, and of their inability to remain constant to the first wife, that they should be connected with a second after the death of the first. Yet he who has had but one wife is held in greater praise and honour by all members of the Church."³ He goes on to say, in a passage which has been already noticed, that a man who has lost his wife, whether by death or divorce, may marry a second time, but not so "that he have two wives

¹ S. Cyril of Jerusalem, *Catechetical Lectures*, N. c. 26.

² S. Gregory Nyssen, *Ep. 2.* (Migne's Ed. tom. iii. p. 1012.)

³ S. Epiphanius, *Against Heresies*, Bk. II. Haer. 59. (Migne's Ed. tom. ii. p. 1024.)

at once, the first yet surviving.”¹ S. Epiphanius was bishop of Salamis in Cyprus, and, like S. Cyril of Jerusalem, he would include among his flock many persons of Jewish descent and traditions. His distinct exclusion of concurrent polygamy is therefore the more striking.

S. Chrysostom.

S. Chrysostom is more lenient than some of his contemporaries. “As marriage is admirable, but virginity is superior to it, so second marriage is admirable, but first and only marriage is superior to it.”² That the widowed should remain unmarried is therefore a matter of commendation, but it is not in any way enjoined.

Commenting on 2 Timothy, he says, “Let the women listen, they who are associated in second marriages, and defile the bed of the deceased husband, whom once they loved. This I say, not forbidding second marriage, nor pronouncing it to be licentious; for Paul does not permit me, placing a bit in my mouth, and saying to the women, ‘But if she marry, she hath not sinned.’ Let us however see what follows, ‘But she is happier if she so abide,’ for this condition is far better than the other.”³

Similarly commenting on Titus, he says, “For ye all know that although to engage in second marriage is not barred by the laws, nevertheless the practice is open to many grounds of objection.”⁴

S. Jerome.

S. Jerome expressed his views on the subject of second marriages in an extraordinary letter to Salvina, the young widow of Nebridius. This lady was personally unknown to S. Jerome, but he had heard of her in his retreat in Palestine, and wrote to her in consequence. He tells her that the reason of S. Paul’s concession of second marriages is to be found in his statement that some were “already turned aside after Satan.” Remarriage then was better than sin, and that was all which could be said for it. “Accordingly let a young widow,

¹ S. Epiphanius, *Against Heresies*, Bk. II. Haer. 59. (Migne’s Ed. tom. ii. p. 1024.)

² S. Chrysostom, *In illud*, Vidua eligatur, &c. (Migne’s Ed. tom. iii. p. 325.)

³ *Ibid.* on 2 Tim. c. iii. Hom. vii. (Migne’s Ed. tom. xi. p. 641.)

⁴ *Ibid.* in Epist. ad Titum, cap. I. Hom. ii.

who cannot or will not contain, accept a husband rather than the devil.”¹ Whatever Salvina may have thought of S. Jerome’s letter, it is interesting to learn that she did in fact remain unmarried, and that she became one of the deaconesses who devoted themselves to Church work under S. Chrysostom in Constantinople.

In his letter to Ageruchia, another widow lady, S. Jerome expresses the same views with equal crudeness.² Remarriage is permitted by the apostle that there may be connexion with one rather than with many.³ Notwithstanding these strong views as to the ignoble character of second marriages, S. Jerome, in a letter to Marcella on the errors of the Montanists, is careful to guard against the entire prohibition of such marriages, a prohibition which formed one of the peculiarities of the Montanist sect.⁴ Again, commenting on the Epistle to S. Titus, he is careful to point out that not every monogamist is to be preferred to a digamist, since the circumstances of marriages are so widely different.⁵

S. Ambrose, in the *De viduis*, says that “we neither prohibit second marriages, nor do we counsel them.” “I say more, we do not prohibit second marriages, but we do not approve marriages often repeated; for everything which is lawful is not therefore expedient. All things are lawful to me, says the apostle, but all things are not expedient. And it is lawful to drink wine, but it is not fitting to drink a very large quantity.”⁶ S. Ambrose.

The writer known as Ambrosiaster, commenting on the first epistle to the Corinthians, appears to imply that the practice of withholding the benediction from second marriages was already in force in his day. “First marriages are celebrated solemnly under the benediction of God, but second marriages, Ambrosiaster.

¹ S. Jerome, *Ep.* 79. *To Salvina*. (Migne’s Ed. tom. i. p. 732.)

² *Ibid.* *Ep.* 123. *To Ageruchia*. (Migne’s Ed. tom. i. p. 1050.)

³ The example of the non-Christian world must not be overlooked. S. Jerome’s argument is one of the commonplaces of the Hindu social reformer of the present day.

⁴ S. Jerome, *Ep.* 41. *To Marcella*. (Migne’s Ed. tom. i. p. 475.)

⁵ *Ibid.* *On the Epistle to Titus*, c. I. (Migne’s Ed. tom. vii. p. 564.)

⁶ S. Ambrose, *De viduis*, c. xi. (Migne’s Ed. tom. ii. p. 254.)

even in this present life, lack glory; yet they have been conceded on account of incontinence.”¹

S. Augustine. S. Augustine, in the *De Bono Viduitatis*, says that Ruth was blessed, but that Anna was more blessed. Second marriages are not condemned, but they are less highly honoured. The heresy of the Novatians and of Tertullian is to be avoided.²

Statuta ecclesiae antiqua. Quesnel has placed together in the works of S. Leo, under the head of *Statuta ecclesiae antiqua*, some remarkable regulations of the African churches. Before a bishop was consecrated many questions were to be asked of him. Among them he was to be asked “whether he did not discountenance marriage, and whether he did not condemn second marriages.”³ The African churches may be supposed to have been brought into occasional touch with the polygamous practices which prevailed in the barbarous communities upon their fringe, but is it possible that a church which found it necessary to impose such tests as those just noticed, should have been in any danger of an inroad of polygamous practice within its borders?

S. Amphilochius. S. Amphilochius is of opinion that the remarriage of a widow is blameworthy, especially when there is offspring by the first marriage. If there are no children he thinks that remarriage is much more readily permissible.⁴

Socrates. Socrates, the ecclesiastical historian, states that “the Novatians in Phrygia do not receive digamists. But they in the city of Constantine neither openly receive them, nor openly expel them.”⁵

Summing up the testimony of the first four centuries on the subject of successive marriages, we find ourselves confronted all along the line, in East and West alike, with a rigorism of view which has now passed away from the Christian Church. Whether the ancient rigorism or the modern laxity is the nearer to the mind of Him “who made one” is perhaps an

¹ Ambrosiaster, *On the first Epistle to the Corinthians*. (Migne's Ed. S. Ambrose, tom. ii. p. 226.)

² S. Augustine, *De Bono Viduitatis*, cap. iv. (Migne's Ed. tom. vi. p. 433.)

³ *Statuta ecclesiae antiqua* (in Ballerini's S. Leo, Migne's Ed. tom. iii. p. 880).

⁴ S. Amphilochius, *Oratio in Domini occursum*.

⁵ Soçrates, *Ecclesiastical History*, Bk. V. c. 22. (Migne's Ed. p. 641.)

open question; but there can hardly be any reasonable question that the rigorism of the early Church left no scope for lax views on the subject of the admission of polygamists to baptism. It is surely more than plain that if any such indulgent practice was in force, or even contemplated, it would have been the subject of no measured animadversion on the part of some. That there is simply no instance of any such practice mentioned by any early Christian writer, as either contemplated or in force, is proof as convincing as need be desired that no such practice did in fact ever obtain.

Impossible that polygamy could have found a place in the Early Church.

AUTHORITIES ON POLYGAMY.

ORIGEN.

In Genesim. Hom. XI.¹

Quid ergo? putamus quod in tanto patriarcha per idem tempus incitamenta carnis viguerint? Et qui olim naturalibus motibus emortuus dicitur, nunc ad libidinem redivivus putabitur? An, ut saepe jam diximus, patriarcharum conjugia mysticum aliquod indicant sacramentum?

Sic et ille in Scripturis vir justus Elchana duas simul refertur habuisse uxores, quarum una Fenenna, alia Anna dicebatur, id est conversio et gratia. Et primo quidem dicitur de Fenenna filios suscepisse, id est de conversione, et postmodum de Anna, quae est gratia.

TERTULLIAN.

Ad Uxorem, lib. i. c. 2.²

Non quidem abnuimus conjunctionem viri ac foeminae benedictam a Domino, ut sciremus generi humano et replendo orbi et instruendo saeculo excogitatam, atque exinde permissam; unam tamen. Nam et Adam unus Evae maritus, et Eva una uxor illius, una mulier, una costa. Sane apud veteres nostros, ipsosque patriarchas, non modo nubere, sed etiam plurifariam matrimoniis uti fas fuit, erant et concubinae: sed licet figuratum in synagogam et Ecclesiam cesserit, ut tamen simpliciter interpretemur, necessarium fuit instituere, quae postea aut amputari, aut temperari mererentur. Superventura enim lex erat, oportebat legis adimplendae causas praecucurrisse. Idem

¹ Migne's Ed. tom. xii. pp. 221-2.

² *Ibid.* tom. i. p. 1277.

mox legi succurrere habebat, Dei sermo circumcisionem inducens spiritalem. Igitur per licentiam tunc passivam, materiae subsequen-
tium emendationum praeministrabantur, quas Dominus Evangelio
suo, dehinc Apostolus in extremitatibus saeculi, aut excidit redun-
dantes, aut composuit inconditas.

TERTULLIAN.

De Monogamia, c. 6.¹

Quid digamia illa Abrahae portendat, idem apostolus edocet, inter-
pretator utriusque Testamenti, sicut idem semen nostrum in Isaac
vocatam determinat. Si ex libera es, ad Isaac pertinens, hic certe
unum matrimonium pertulit.

De Monogamia, c. 4.²

At ubi primum scelus, homicidium, in fratricidio dedicatum, tam
dignum secundo loco scelus non fuit, quam duae nuptiae.

Cap. 5.

. . . Si ita factum est a primordio, invenimus nos ad initium
dirigi a Christo: sicut in quaestione repudii, dicens illud propter
duritiam ipsorum a Moyse esse permissum, ab initio autem non ita
fuisse, sine dubio ad initium revocat matrimonii individuitatem.

S. JEROME.

Epistle to Salvina.³

Primus Lamech maledictus, et sanguinarius, et de Cain stirpe
descendens, unam costam divisit in duas, et plantariam bigamiae
protinus diluvii poena subvertit.

Epistle to Ageruchia. (No. 123.)⁴

Primi hominis creatura nos doceat, plures nuptias refutare. Unus
Adam et una Eva, imo una ex eo costa separatur in feminam.
Rursumque quod divisum fuerat, nuptiis copulatur, dicente Scriptura:
Erunt duo in carnem unam; non in duas, nec in tres. *Propter quod*
relinquet homo patrem et matrem, et adhaerebit uxori suae; certe non
uxoribus.

¹ Migne's Ed. tom. ii. p. 937.

³ *Ibid.* tom. i. p. 732.

² *Ibid.* p. 934.

⁴ *Ibid.* pp. 1053-4.

At Patriarchae non singulas habuerunt uxores, imo et concubinas habuere plurimas. Et, ne hoc parum sit, David multas, et Salomon habuit innumerabiles. Judas ad Thamar, quasi ad scortum, ingreditur. Et juxta occidentem litteram, Osee Propheta non solum meretrici sed etiam adulterae copulatur. Quod si et nobis jure conceditur, adhin-
niamus ad omnes feminas, et in exemplum Sodomae et Gomorrae, ab ultimo die deprehendamur vendentes, et ementes, nubentes, et nuptui tradentes, et tunc sit finis conjugii, quando terminus vitae.

Haec dicimus, non separantes Legem et Evangelium, ut Marcion calumniatur; sed unum atque eundem suscipientes Deum, qui pro varietate temporum atque causarum principium et finis; serit ut metat, plantat ut habeat quod succidat; jacet fundamentum ut aedificationi, consummato saeculo, culmen imponat.

S. AMBROSE.

*De Abraham, lib. i. § 23.*¹

Movere tamen aliquos potest, quod jam cum Deo loquebatur, et ad ancillam introivit, sicut scriptum est: Quia *dixit Sara ad Abram: Ecce conclusit me Dominus, ut non pariam: intra ergo ad ancillam meam, ut filios facies ex illa.* Et ita factum est. Sed consideremus, primum quia Abraham ante legem Moysis, et ante Evangelium fuit: nondum interdictum adulterium videbatur. Poena criminis ex tempore legis est, quae crimen inhibuit: nec ante legem ulla rei damnatio est; sed ex lege. Non ergo in legem commisit Abraham, sed praevenit. Deus in paradiso licet conjugium laudaverit, non adulterium damnaverat. Non vult enim mortem peccatoris, et ideo quod praemii est pollicetur: quod poenae non exigit. Mavult enim mitibus provocare quam terrere saevioribus. Et tu peccasti cum gentilis esses, habes excusationem: venisti ad Ecclesiam, audisti legem: Non adulterabis, jam excusationem delicti non habes.

S. AUGUSTINE.

*De nuptiis et concupiscentia, lib. i. c. 8, 9.*²

Sic (prolis gratia) patres sanctos ex Abraham et ante Abraham, quibus Deus quod ei placuerint perhibet testimonium, usos fuisse conjugibus neminem oportet dubitare christianum; quando quibusdam etiam singulis plures habere concessum est, ubi ratio fuit prolis multiplicandae, non variandae appetitio voluptatis.

¹ Migne's Ed. tom. i. p. 429.

² *Ibid.* tom. x. p. 419.

Nam si Deo patrum nostrorum, qui etiam noster est, illa numerositas conjugum propterea non displicuisset, ut copiosius se libido jactaret, ita etiam sanctae feminae servissent pluribus singulae: quod si aliqua faceret, quid eam nisi concupiscentiae turpitudine compelleret, ut plures viros haberet, quando ista licentia plures filios non haberet. Verumtamen magis pertinere ad nuptiarum bonum, non unum et multas, sed unum et unam, satis indicat ipsa prima divinitus facta conjugum copula, ut inde connubia sumerent initium, ubi honestius attenderetur exemplum. Progrediente autem genere humano, junctae sunt quibusdam bonis viris bonae feminae, singulis plures. Unde apparet et illud dignitatis magis appetisse modestiam, et hoc fecunditatis permisisse naturam. Nam et principatus magis naturaliter unius in multos, quam in unum potest esse multorum. Nec dubitari potest naturali ordine viros potius feminis, quam viros feminas principari. Quod servans Apostolus ait, *Caput mulieris vir*; et, *Mulieres subditae estote viris vestris*: et apostolus Petrus, *Quomodo Sara*, inquit, *obsequabatur Abrahae, dominum illum vocans*. Quod licet ita sese habeat, ut natura principiorum amet singularitatem, facilius autem pluralitatem in subditis: tamen plures feminae uni viro nunquam licite jungerentur; nisi ex hoc plures filii nascerentur. Unde si una concumbat cum pluribus, quia non est ei hinc multiplicatio prolis, sed frequentatio libidinis, conjux non potest esse, sed meretrix.

De Fide et Operibus, c. 19.¹

De concubina quoque, si professa fuerit, nullum se alium cognituram, etiamsi ab illo, cui subdita est, dimittatur, merito dubitatur, utrum ad percipiendum baptisma non debet admitti.

THE LAMBETH CONFERENCE, 1888.

Resolutions formally adopted by the Conference.

5. (A) That it is the opinion of this Conference that persons living in polygamy be not admitted to baptism, but that they be accepted as candidates and kept under Christian instruction until such time as they shall be in a position to accept the law of Christ.²
- (B) That the wives of polygamists may, in the opinion of this Conference, be admitted in some cases to baptism, but that

¹ Migne's Ed. tom. vi. p. 221.

² Carried by 83 votes to 21.

it must be left to the local authorities of the Church to decide under what circumstances they may be baptised.¹

*Report of the Committee² appointed to consider the subject of
Polygamy of Heathen Converts.*

Your Committee have approached the consideration of the subject submitted to them with an overwhelming sense of their responsibilities, inasmuch as the question intimately affects the sanctity of marriage, and therefore lies at the root of social morality.

After considering various representations which have been laid before them from divers quarters, they beg leave to report as follows :

1. Your Committee desire to affirm distinctly that Polygamy is inconsistent with the law of Christ respecting marriage.

2. They cannot find that either the law of Christ or the usage of the early Church would permit the baptism of any man living in the practice of polygamy, even though the polygamous alliances should have been contracted before his conversion.

3. They are well aware that the change from polygamy to monogamy must frequently involve great difficulty and even hardship, but they are of opinion that it is not possible to lay down a precise rule to be observed under all circumstances in dealing with this difficulty.

They consequently think that the question of time and manner, which must depend largely on local circumstances, can only be determined by local authority.

4. Your Committee recommend that persons living in polygamy should, on their conversion, be accepted as candidates for Baptism, and kept under Christian instruction until such time as they shall be in a position to accept the law of Christ.

They consider it far better that Baptism should be withheld from such persons, while nevertheless they receive instruction in the

¹ Carried by 54 votes to 34.

² Names of the Members of the Committee :

Bishop of Durham (<i>Chairman</i>).
" Central Africa.
" Chester.
" Exeter.
" Guiana.
" London.
" Meath.
" Missouri.

Bishop of the Niger.
Bishop Perry.
Bishop of Sierra Leone.
" South Dakota.
" Travancore.
" Waiapu.
" Zululand.

truths of the Gospel, than that a measure should be sanctioned which would tend to lower the conception of the Christian law of marriage, and thus inflict an irreparable wound on the morality of the Christian Church in its most vital part.

5. The wives of polygamists may, in the opinion of the Committee, be admitted in some cases to Baptism, inasmuch as their position is materially different from that of the polygamist husband. In most countries where polygamy prevails they have no personal freedom to contract or dissolve a matrimonial alliance; and moreover they presumably do not violate the Christian precept which enjoins fidelity to one husband.

6. In carrying into effect the principles here laid down, with due regard to the dictates of love and justice, serious burdens will in some cases be imposed on the Churches, but no trouble, or cost, or self-sacrifice ought to be spared to make any suffering which may be caused as light and easy to bear as possible.

7. Difficult questions of detail which may arise in following these recommendations must be left to the decision of the local authorities of the Church, whether Diocesan or Provincial.

8. Throughout this Report polygamy has been taken to mean the union of one man with several wives; but among some tribes the union of one woman with several husbands is a recognised institution. It will be plain that no such union can be recognised by the Church.

9. It has been represented to your Committee that heathen marriages in many cases do not imply a mutual pledge of life-long fidelity; and instruction has been asked as to the mode of dealing with such cases on the conversion of the contracting parties, so as to impart a Christian character to the contract. The Committee think it best to leave the local authorities of the Church to determine in what way this end may be best attained; but they deprecate any course which would tend to impair the validity (within their own sphere) of contracts undertaken prior to conversion, so far as these contracts are not inconsistent with the law of Christ.

10. In laying down the principles which should rule the admission of Christian converts for the future, the Committee have no intention of passing any censure on those who have decided otherwise in the past; and they desire to leave to individual Bishops the responsibility of dealing with difficulties which may arise in any part of the mission-field from the adoption of a different line of action heretofore by those in authority.

J. B. DUNELM,

Chairman.

It has been shewn that polygamy has no support from early Christianity, first, because early Christianity was not confronted with it, and also because the teaching of the Church on the subjects (α) of remarriage after divorce and (β) of second marriages settled the question by anticipation.

Since, therefore, polygamy lay entirely outside the experience of the early Christian writers, they are never found to deal directly with the matter as of practical bearing. They do sometimes touch upon it by way of commentary on the Old Testament scriptures. They experience a difficulty in justifying to their flocks the lives of the patriarchs of the old law. Various reasons for God's sufferance or sanction of polygamy are assigned. The majority appear to have been content with the view that the procreation of children, an object of great importance in the beginnings of the race, was thereby the better attained. It is strange that acute writers like S. Clement of Alexandria and S. Augustine failed to see that the question as regards offspring is not, How can one man come to have the largest number of children? but, Given a certain number of women of child-bearing age, will they be most fruitful if many of them are assigned to one man, or if each have a husband of her own? Probably in the absence of the exact statistics of modern times, the early Christian writers were more or less of opinion that the world contained more women than men. However this may be, it need hardly be said in the present day that the statement that polygamy is more fruitful than monogamy is demonstrably false, and that the reverse proposition is one of the established results of social science.

Polygamy never dealt with as of practical bearing.

Sometimes treated by way of comment on the Old Testament.

Origen, in his mystic way, sees in the polygamy of the patriarchs a sort of *sacramentum*. Writing of Abraham's marriage with Keturah, he asks, "Or, as we have often said before, do the marriages of the patriarchs indicate a certain mystic *sacramentum*?"¹ Further on he gives an example in Elkanah: "And so that just man Elkanah is related to have had two wives at the same time, of whom the one was called

Origen.

¹ Origen, *In Genesim*, Hom. xi. (Migne's Ed. tom. xii. pp. 221-2.)

Peninnah, and the other Hannah, that is, conversion and grace. And first, indeed, he is said to have begotten children of Peninnah, that is, of conversion, and afterwards of Hannah, which is grace.”¹ It would serve no sufficient purpose to attempt to refer to all the statements in early Christian writers on the subject of the polygamy of the patriarchs. Those references which, starting from the polygamy of the patriarchs, use it to establish the marked contrast of Christian practice, are of more importance.

S. Clement of Alexandria Thus S. Clement of Alexandria says that “the same Man and Lord, making old things new, no longer concedes polygamy, for at that time God required it (*ἀπῆτει*) because it was necessary to increase and multiply, but He brings in single marriage for the sake of procreation of children, and for that care of the house for which woman was given as a help.”²

Tertullian. Tertullian is never tired of pointing out that the original marriage of Paradise was the marriage of one man with one woman. Subsequently, “among our ancients, and the patriarchs themselves, it was not only legitimate (*fas*) to marry, but even to use manifold marriages. There were also concubines, but although there might have been a figurative reference to the synagogue and the Church, yet that we may interpret with simplicity it was then necessary to institute practices which, at a later date, would deserve to be either abolished or modified.”³ This occurs in the *Ad Uxorem*, and represents Tertullian’s views in the days of his orthodoxy. In his Montanist days he is disposed to take refuge in figurative intention as the one justification of the polygamy of Abraham, while the polygamy of others, as of Lamech, is branded as crime. “What that digamy of Abraham portends let that same Apostle teach, the interpreter of either Testament, as he determines that our seed is called in Isaac. If thou art from the free woman, pertaining to Isaac, he certainly was married but once.”⁴ Of Lamech’s polygamy he says that

¹ Origen, *In Genesim*. Hom. xi. (Migne’s Ed. tom. xii. pp. 221–2.)

² S. Clement of Alexandria, *Stromata* iii. 12. (Migne’s Ed. tom. i. p. 1184.)

³ Tertullian, *Ad Uxorem*, lib. 1, c. 2. (Migne’s Ed. tom. i. p. 1277.)

⁴ Tertullian, *De Monogamia*, c. 6. (Migne’s Ed. tom. ii. p. 937.)

after the fratricide of Cain "there was no crime so worthy of the second place as double nuptials."¹

The argument of Tertullian that the monogamy of the original institution is restored by Christ would be unexceptionable, if it were not employed to discredit second marriages. "If thus it was done from the outset, we find ourselves directed to the beginning by Christ; as in the question of divorce, saying that that had been permitted by Moses on account of their hardness, but that from the beginning it had not been so, so without doubt he recalls to the beginnings the undividedness of marriage."²

S. Jerome is careful to point out that Lamech, the introducer S. Jerome. of bigamy, was a person accursed, and blood-guilty, and a descendant of Cain.³ In the *Epistle to Ageruchia* he refers to the polygamy of the patriarchs as a *reductio ad absurdum* of the argument that their example was a justification for Christians in marriage relations.⁴

S. Ambrose explains the connexion of Abram and Hagar by S. Ambrose. the statement that "adultery was apparently not yet forbidden." For a Christian who should act similarly there would be no excuse.⁵

S. Augustine, in the *De Nuptiis et Concupiscentia*, says that S. Augustine. the reason why polygamy was conceded to the patriarchs was that they might have more abundant offspring.⁶

A passage of some interest in the *De Fide et Operibus* has already been referred to in Chapter VIII. S. Augustine says: "It is rightly a matter of doubt, in the case of a concubine who has affirmed that she will have intercourse with no other man, even if she be dismissed by him with whom she is connected, whether she ought not to be admitted to the reception of baptism."⁷ The case has its analogies with the case of the wife of a polygamist *in posse*.

¹ Tertullian, *De Monogamia*, c. 4. (Migne's Ed. tom. ii. p. 934.) ² *Ibid.* c. 5.

³ S. Jerome, *Epistle to Salvina*. (Migne's Ed. tom. i. p. 732.)

⁴ *Ibid.* *Epistle to Ageruchia*. (Migne's Ed. tom. i. pp. 1053-4.)

⁵ S. Ambrose, *De Abraham*, lib. i. § 23. (Migne's Ed. tom. i. p. 429.)

⁶ S. Augustine, *De Nuptiis et Concupiscentia*, lib. i. c. 8, 9. (Migne's Ed. tom. x. p. 419.)

⁷ *Ibid.* *De Fide et Operibus*. (Migne's Ed. tom. vi. p. 221.)

It may thus be generally stated that the Christian writers of the early centuries never regarded polygamy as possible in the case of a Christian, and that they looked to the practice of the patriarchs in the matter of polygamy as to a concession which had passed away, and not as to an example which might be followed.

There is indeed no tittle of evidence forthcoming that the Christian Church did at any time, or in any place, receive among her reconciled children either a man who was living as the husband of two or more women, or a woman who was living as the wife of two or more men. There is no evidence of the existence of any such practice among those who were already Christians, and there is no evidence of the admission to baptism of any non-Christian who retained the practice.

The
Lambeth
Conference
of 1888.

Appended to the earlier authorities given above is the report of the Committee of the Lambeth Conference of 1888, which was "appointed to consider the subject of polygamy of heathen converts," and the resolutions which, after consideration of the report, were formally adopted by the Conference. They demand the respectful attention of every Anglican churchman. The first resolution will admit to baptism no person living in polygamy; that is to say, maintaining conjugal relations with more than one wife or husband. The second resolution runs: "That the wives of polygamists may, in the opinion of the Conference, be admitted in some cases to baptism, but that it must be left to the local authorities of the Church to decide under what circumstances they may be baptized." The wives of polygamists so admitted are, of course, understood to be themselves exclusively faithful to one husband.

Polygamy
not open
to a
Christian.

So far as regards the contemporary controversy, it is not sought by any to claim for persons baptized a right to enter upon fresh relations of a polygamous character, but only to justify the granting of permission to polygamous converts to retain after their baptism the wives which they possessed before their baptism. In this treatise the principles which have been arrived at preclude the according of this permission. The only sexual connexion open to a baptized man, without bringing with it a fall from grace, is the connexion of Christian

marriage, involving, as in the first institution, exclusive fidelity to one wife. Nor has Holy Scripture, or Christian tradition, one word to urge on the other side. We conclude, therefore, that no polygamist may continue his relations with more than one wife after his baptism.

The case of a polygamist's wife, who may become a convert, has been already adverted to in Chapter VIII. The difficulty here does not lie (1) in the difference of religion, which is provided for by the Pauline privilege; or (2) in the absence of exclusive fidelity on the husband's part, for a Christian wife is not bound to put away her husband for adultery; or (3) in the absence of exclusive fidelity on the wife's part, for she is presumably faithful to the one husband; but (4) in the fact that she is no more the polygamist's wife than any one of his other wives. Her conversion to Christianity cannot deprive the other wives of their hitherto equal rights, and the difficulty seems to be expressed by two questions: (*a*) Is the converted wife of a polygamist sufficiently his wife for her union to become to her Christian marriage at her baptism? (*b*) If she be, and she be allowed to continue after baptism her conjugal relations with the polygamist husband, and if her marriage become to her Christian or Holy Matrimony, will it afterwards be open to one or more of the other wives, upon conversion and baptism, to continue their conjugal relations with the same husband, as being also to them Christian or Holy Matrimony? The difficulty is great. If both questions are answered affirmatively, we are confronted by the possible cases of a Musulman with four Christian wives, or of a Kulin Brahman with twenty. S. Augustine, as has been seen, deals with a case which has some analogies. With regard to a woman whose status was that of a concubine under the Roman Law, if she were prepared to promise fidelity to her consort, even though he should dismiss her (presumably for another woman, whether wife or concubine), he declares that "it is rightly a matter of doubt whether she ought not to be admitted to the reception of baptism." Here a woman bound by a tie which before the Roman Law was professedly dissoluble, and indeed presumably temporary, might, he thinks,

Case of a
polyga-
mist's wife
converted
to
Christi-
anity.

accept the union as being to her Christian marriage, and involving, as far as she was concerned, both indissolubility and exclusive faithfulness. But even by the Roman Law the man, if he afterwards married a wife in the legal sense, could not then continue his relations with the concubine. There would be no concurrent polygamy, and there can be little doubt also that in S. Augustine's view the concubine, admitted to baptism and to the continuance of her status as being to her Christian marriage, was in fact the one possible Christian wife, to the exclusion of any other woman who might afterwards obtain the status of wife as before the secular law. The case may help to determine the answer to the first of the two questions. It is the case of a woman whose union, open to supersession as it was, might perhaps be permitted to continue after baptism if accepted by herself as Christian marriage. It must be remembered also that in the vast majority of the cases of married converts, divorce by the unconverted partner, involving supersession of the convert by a fresh wife or husband, as the case might be, was always to be reckoned with as a future possibility. On the whole it may be said to be probable that the converted wife of a polygamist is sufficiently his wife for her union to become to her Christian marriage at her baptism. But next comes the difficulty expressed in the second question. One Christian woman has been permitted to continue her relations with the polygamist husband, and these relations have now become to her Christian marriage. Another of the wives is convinced of the truth of Christianity and desires baptism. May this wife also be allowed, after baptism, to continue her conjugal relations with the same husband? She can, of course, only do so on the understanding that from the time of her baptism the union is to her Christian marriage, exclusive and indissoluble. But is this now open to her? Granted that before the baptism of any one of the wives all had equal conjugal rights, can that be said when one of the wives has been baptized and allowed to accept her status as being to her Christian marriage? The difficulty would become acute if, after the baptism of the two wives, the husband also were to seek baptism. He would only be permitted to retain

one of the wives after his baptism. So far as the obligations of his pre-Christian unions went he would probably not be bound to retain either, though Christian charity, and perhaps ecclesiastical requirement, might demand that he should keep one or the other, but both he ought not to keep. Which, then, should he put away? It has been sometimes answered that he should keep the first baptized, but while this might often be the best course, he had been no party to the strict conditions of Christian matrimony which the women had in each case accepted for themselves at their baptisms; and unless and until he agreed to accept those conditions with regard to either woman, neither could claim him as by right her husband, necessarily bound to her in the Body of Christ as she, since her baptism, had held herself bound to him.

Putting aside now the possible conversion of the husband, it does not appear that the second wife converted is necessarily barred from continuing conjugal relations with her non-Christian husband by the fact that another of the wives has already been baptized, and has already accepted her status as Christian marriage. The action of the first wife cannot necessarily bind the husband to choose her more than another in the event of his becoming a Christian, because she cannot thus in anticipation control the freedom of his consent. Accordingly the second wife who is baptized, and wishes to continue conjugal relations, is in no worse position than the first, though in no better.

Essentially therefore, or so far as the Divine laws of marriage are concerned, it would appear that either of the two women, and that both, may be permitted to avail themselves of the concession which permits a converted wife to remain with a non-Christian husband. In any case such an union can only exist under circumstances of grave inequality; but, as was seen in the last chapter, the Divine mercy supplies a special grace to the converted partner to make good what is lacking in the union so far as it affects herself. It would appear that the case of a polygamist, two of whose wives become Christian, while it is a case illustrating in a marked manner the grave inequalities of unions between Christians and non-Christians, is not necessarily a case outside the operation of the Divine

concession. Each of the two women may have the grace supplied which is required to make her union to be to her Christian marriage.

While, however, this may be the right conclusion from the point of view of the Divine law, it is obvious that the possession by one polygamist of two or more Christian wives is eminently undesirable. Apart from other considerations, there is always the possibility of the man's own baptism, and the consequent necessity of putting away every wife but one. In practice, therefore, by persuasion and by ecclesiastical regulation, it may commonly be desirable to check the growth of any tendency to permit more than one Christian wife to remain with a non-Christian husband.

The resolution formally adopted by the Lambeth Conference embodies the best wisdom of the Church upon the subject. It may be repeated here: "That the wives of polygamists may, in the opinion of this Conference, be admitted in some cases to baptism, but that it must be left to the local authorities of the Church to decide under what circumstances they may be baptized."

This chapter may be concluded by the formulation of the definite rules which our investigations appear to indicate:

1. *No baptized man may become the husband of more than one woman at the same time.*
2. *No baptized woman may become the wife of more than one man at the same time.*
3. *No male convert may after baptism continue marital relations with more than one wife.*
4. *No female convert may after baptism continue conjugal relations with more than one husband.*
5. *No male convert from a polyandrous community may after baptism continue marital relations with a polyandrous woman, the "connivance at adultery," and the "confusio prolis" being unholy.*
6. *A female convert who is the wife of a polygamist husband may in some cases be permitted to continue after baptism conjugal*

relations with the polygamist husband, the particular cases being left to the local Church authorities. In any case where the female convert is thus permitted to continue conjugal relations with a polygamist husband, the union must be held to have become to her Christian marriage, and therefore both exclusive and indissoluble.

CHAPTER X

OF MARRIAGES OF NEAR KIN

Intro-
ductory
remarks.

Christians
are bound
to revert
from
divorce and
polygamy
to the
Divine
institution.

The
unholiness
of the
marriages
of near kin
may be not
so much a

IN the investigations which have been pursued on the subjects (1) of divorce and remarriage, and (2) of polygamy, one great principle has been found to establish itself alike in the teaching of Holy Scripture, and in the belief and practice of the Christian Church. It is the principle that for members of the body of Christ nothing short of the requirements of the original Divine institution can be admitted. There was no divorce in the original institution, and there is no divorce in the marriage of members of the body of Christ. There was no polygamy in the marriage which God instituted, and the Christian may not be a polygamist. He will do well to abstain from the condemnation of those who, in the fallen state, and deprived of the sustaining grace of God, have practised either divorce or polygamy; for God Himself has been mysteriously long-suffering as regards these declensions from the primal law in the persons of the fallen and unrestored. But in his own case the Christian can admit neither divorce with remarriage nor polygamy, for either would be a fall from grace, a forfeiting of the blessedness of the reconciled, a return to the state of sin in which outside Christianity the race still lies involved.

In turning next to the mysterious subject of the unholiness of alliances with near kin, we seem to come upon another side of the mystery of marriage. Divorce and polygamy contravened the Divine institution, but in a fallen state were suffered by the Divine long-suffering. The alliance of near kin, unholy

now because of the shamefulness of the fallen nature, may probably not have been repugnant to the marriage of Paradise; but as the first result of the Fall was that Adam and Eve could no longer be "naked and not ashamed," so in the "uncovering of the nakedness" of those nearly related is ever found "an abomination to the Lord," and as it were the very seat and centre of the special curse attaching to the Fall. The nation which does these things is "vomited out"; the individual who does them is "cut off."

part of the
Divine
institution
as a result
of the Fall,

In the relationships of near kin, therefore, it may be that the fallen nature which we have inherited hinders us from reverting altogether to the possibilities of the unfallen state; but further, if unlike divorce and polygamy these alliances were not permitted by God to remain without warning or without punishment, even in the case of the heathen, much more are they unholy to the reconciled people of God.

but such
marriages,
unlike
divorce and
polygamy,
are for-
bidden to
the very
heathen,
and
accordingly
to
Christians.

That alliances of near kin were prohibited even to the heathen is sufficiently clear. In a former chapter it was seen that as after the Fall all flesh corrupted itself, not the least of its corruptions was that nearness of unholy alliance by which blood touched blood, and the nakedness of those to whom honour was due was uncovered in the shamefulness of its fallen condition. It was probably so before the Flood, but certainly when after the Flood man began again to multiply upon the earth, the sin of incestuous alliance became the fruitful mother of curse and disaster to the race. If, while recognising God's mercy to His chosen people, we yet ask in reverent amazement what the Canaanites had done that they should be driven out from their pleasant land, and destined by God to annihilation, we are not left without an answer. "After the doings of the land of Egypt, wherein ye dwelt, shall ye not do: and after the doings of the land of Canaan, whither I bring you, shall ye not do: neither shall ye walk in their statutes,"¹ are the words which introduce the enumeration of the acts of unholy alliance forbidden in the 18th chapter of Leviticus; and the enumeration is brought to a close with

Universal
application
of the
prohibition.

¹ Lev. xviii. 3. R.V.

the solemn warning, "Defile not ye yourselves in any of these things: for in all these the nations are defiled which I cast out from before you: and the land is defiled: therefore I do visit the iniquity thereof upon it, and the land vomiteth out her inhabitants. Ye therefore shall keep my statutes and my judgments, and shall not do any of these abominations: neither the homeborn, nor the stranger that sojourneth among you: (for all these abominations have the men of the land done which were before you, and the land is defiled); that the land vomit not you out also, when ye defile it, as it vomited out the nation that was before you. For whosoever shall do any of these abominations, even the souls that do them shall be cut off from among their people. Therefore shall ye keep my charge, that ye do not any of these abominable customs, which were done before you, and that ye defile not yourselves therein: I am the Lord your GOD."¹

The sins of the Canaanites were clearly the sins which are legislated against in the verses which intervene between the two passages which have been cited; and these sins comprise fifteen cases of incest,² the sin of connexion during the menstrual impurity,³ the passing of children through the fire to Moloch,⁴ the sin of sodomy,⁵ and the sin of bestiality.⁶ Such are the sins of which it is said, at any rate generally, that they cause a nation to be vomited out from its land, and in the case of individuals bring about the result that the souls which do them are cut off from among their people. This then is a law of universal application, from which even the most benighted of the heathen are on no account to be held exempt.

The universal moral obligation of the laws which bar the marriage of near kin is indicated no less clearly in the 20th chapter of Leviticus. After an enumeration in which are found mentioned both (*a*) sins of incest and (*b*) sins against nature, there immediately follows this exhortation: "Ye shall therefore keep all my statutes, and all my judgments, and do

¹ Lev. xviii. 24-30. R.V.

³ Verse 19.

⁵ Verse 22.

² Verses 6-18.

⁴ Verse 21.

⁶ Verse 23.

them: that the land, whither I bring you to dwell therein, vomit you not out. And ye shall not walk in the customs of the nation, which I cast out before you: for they did all these things, and therefore I abhorred them."¹ These sins then were the great cause of God's abhorrence of the Canaanites. Any nation which does such things, whether it be the chosen nation, or a nation from among the outside heathen, will be "vomited out." Clearly therefore the heathen, as well as the people of God, are held fully responsible in the matter.

The preceding chapters of this volume have prepared us to expect that the Christian law, applicable to the members of the body of Christ, will be more entirely stringent in demanding the unsullied purity of marriage, which alone can be suffered in that holy body, than was the Jewish law, which was promulgated for a banished if favoured race before the redemption of Calvary, and still more than the laws of heathen nations, howsoever otherwise distinguished by a laudable moral standard. This higher stringency is very marked as regards divorce and polygamy. It will not be without its force in the matter of near alliances. The chosen people were suffered in certain deflections which contradicted the clearly expressed tenor of the Divine prohibitions. Such a deflection was (1) the Levirate Law, and (2) on one view of the meaning of Leviticus xviii. 18, another would be the union with the deceased wife's sister. Any such deflections the Christian Church will naturally treat as analogous to the once suffered practices of divorce and polygamy, and passing them by as not permissible to the reconciled children of God, will revert to the fulness of the Divine requirement. Except, however, on these minor points, the prohibition of all marriages of near kin has been held binding not only on the chosen people, but on the heathen. The principle of the higher stringency of the Christian marriage law demands therefore that these prohibitions be held binding *a fortiori* upon Christians.

The higher stringency of the Christian law, passing by any suffered deflections, will revert to the fulness of the Divine requirements,

reimposing *a fortiori* all prohibitions of universal application.

The enquiry into the provisions of the Mosaic Code is thus no longer merely an enquiry into the history and development

¹ Lev. xx. 22, 23. R.V.

of certain laws and practices among the chosen people, but it is of immediate practical application. Prohibitions which were binding on the very heathen, and that under pain of annihilation, must be no less binding on ourselves.

1. HOLY SCRIPTURE.

(i.) *The Mosaic Code.*

(i.) The
Mosaic
Code.

The Mosaic prohibitions are to be found in three lists. Of these, the first occurs in Leviticus xviii., and consists of 14 [15] relationships; the second is in Leviticus xx., and consists of 8 relationships, with the penalty of breach attached; and the third is in Deuteronomy xxvii., where 3 relationships are enumerated, with the addition of a curse.

Leviticus xviii. 6-18:

6 None of you shall approach to any that is near of kin to him, to uncover *their* nakedness: I *am* the LORD.

7 The nakedness of thy father, or the nakedness of thy mother, shalt thou not uncover: she *is* thy mother; thou shalt not uncover her nakedness.

8 The nakedness of thy father's wife shalt thou not uncover: it *is* thy father's nakedness.

9 The nakedness of thy sister, the daughter of thy father, or daughter of thy mother, *whether she be* born at home, or born abroad, *even* their nakedness thou shalt not uncover.

10 The nakedness of thy son's daughter, or of thy daughter's daughter, *even* their nakedness thou shalt not uncover: for their's *is* thine own nakedness.

11 The nakedness of thy father's wife's daughter, begotten of thy father, she *is* thy sister, thou shalt not uncover her nakedness.

12 Thou shalt not uncover the nakedness of thy father's sister: she *is* thy father's near kinswoman.

13 Thou shalt not uncover the nakedness of thy mother's sister: for she *is* thy mother's near kinswoman.

14 Thou shalt not uncover the nakedness of thy father's brother, thou shalt not approach to his wife: she *is* thine aunt.

15 Thou shalt not uncover the nakedness of thy daughter in law: she *is* thy son's wife; thou shalt not uncover her nakedness.

16 Thou shalt not uncover the nakedness of thy brother's wife: it *is* thy brother's nakedness.

17 Thou shalt not uncover the nakedness of a woman and her daughter, neither shalt thou take her son's daughter, or her daughter's daughter, to uncover her nakedness; *for they are* her near kinswomen: it *is* wickedness.

18 Neither shalt thou take a wife to her sister, to vex *her*, to uncover her nakedness, beside the other in her life *time*.

Leviticus xx. 11, 12, 14, 17, 19-21 :

11 And the man that lieth with his father's wife hath uncovered his father's nakedness : both of them shall surely be put to death ; their blood *shall be* upon them.

12 And if a man lie with his daughter in law, both of them shall surely be put to death : they have wrought confusion ; their blood *shall be* upon them.

14 And if a man take a wife and her mother, it *is* wickedness : they shall be burnt with fire, both he and they ; that there be no wickedness among you.

17 And if a man shall take his sister, his father's daughter, or his mother's daughter, and see her nakedness, and she see his nakedness ; it *is* a wicked thing ; and they shall be cut off in the sight of their people : he hath uncovered his sister's nakedness ; he shall bear his iniquity.

19 And thou shalt not uncover the nakedness of thy mother's sister, nor of thy father's sister : for he uncovereth his near kin : they shall bear their iniquity.

20 And if a man shall lie with his uncle's wife, he hath uncovered his uncle's nakedness : they shall bear their sin ; they shall die childless.

21 And if a man shall take his brother's wife, it *is* an unclean thing : he hath uncovered his brother's nakedness ; they shall be childless.

Deuteronomy xxvii. 20, 22, 23.

20 Cursed *be* he that lieth with his father's wife ; because he uncovereth his father's skirt. And all the people shall say, Amen.

22 Cursed *be* he that lieth with his sister, the daughter of his father, or the daughter of his mother. And all the people shall say, Amen.

23 Cursed *be* he that lieth with his mother in law. And all the people shall say, Amen.

The following table will be convenient for comparison :

TABLE I.
MARRIAGES FORBIDDEN TO THE MAN.

No.	Consanguinity or Affinity.	Leviticus xviii. 14[15] without penalty.	Leviticus xx. 8, with penalty.	Deuteronomy xxvii. 3, with curse.	Same relationships expressed from the side of the woman.
1	Con.	Mother.	.....	.....	Son.
2	Aff.	Father's wife.	Father's wife—death to both.	Father's wife—cursed.	Husband's son.
3	Con.	Sister (including half-sister, daughter of father, or daughter of mother).	Sister (or half-sister)—cut off.	Sister —cursed.	Brother.
		
4	Con.	Son's daughter.	.....	.....	.....
5	Con.	Daughter's daughter.	.....	.....	Father's father.
6	Con.	Father's sister.	.....	.....	Mother's father.
7	Con.	Mother's sister.	.....	.....	Brother's son.
8	Aff.	Father's brother's wife.	Father's sister. } Bear their iniquity.	.....	Sister's son.
9	Aff.	Son's wife.	Mother's sister. }	.....	Husband's brother's son.
10	Aff.	Brother's wife.	Uncle's wife—die childless.	.....	Husband's father.
11	Aff.	Wife's daughter. } "Woman and her daughter."	Daughter-in-law—death to both.	.....	Husband's brother.
			Brother's wife—childless.	.....	Mother's husband.
		
12	Aff.	Wife's mother.	Wife's mother—all three to be burnt.	Wife's mother—cursed.	Daughter's husband.
13	Aff.	Wife's son's daughter.	.....	.....	Father's mother's husband.
14	Aff.	Wife's daughter's daughter.	.....	.....	Mother's mother's husband.
[15]	[Aff.]	[Wife's sister.]	.....	.....	[Sister's husband].

It will be seen that the two enumerations of Leviticus xx. and Deuteronomy xxvii. do not add any fresh relationships to the list given in Leviticus xviii., except that the prohibition to marry an uncle's wife in Leviticus xx. may be taken to cover the case of a mother's brother's wife, as well as that of the father's brother's wife specified in Leviticus xviii.

It would be out of place to expect in a legal system of the character of the Mosaic Code the exhaustive completeness or the analytical arrangement of modern bodies of law. Yet it is not difficult to discern a reasonable arrangement in the provisions of the Code. They begin with (a) a preamble which, by alluding to the cases of the Canaanites and the Egyptians, expresses the universality of the obligations about to be laid down, and the character of the punishment which will result from any general breach of them. They go on to the expression of (β) a general enactment: "None of you shall approach to any that is near of kin to him to uncover their nakedness: I am the Lord." This general enactment lays down the inherent impurity, at least in a fallen race, of connexions of near kin, and their consequent character as breaches of Divine law. (γ) Then follow a certain number of representative cases, by no means exhaustive of the principles which they involve, but, as it would seem, leaving those principles to be inferred as necessarily involved in the cases given, and to be applied from those cases to others as occasion may require. While the representative cases given are greatly defective on any possible principle, if regarded as an exhaustive statement, they are at the same time redundant in one case, and to a certain extent in a second; but the grounds of the redundancy are at once obvious. The names of Abraham and of Jacob were rightly honoured by the chosen people, not only as the names of their own patriarchs, but as the names of patriarchs who had been specially blessed and favoured by Almighty God. As we have seen, however, in the gradual withdrawal of God's chosen instruments from the sin around, Abraham had not escaped a connexion of inherent wrongfulness with his half-sister Sarah, nor had Jacob escaped a connexion at once bigamous and incestuous with Rachel and Leah. It would seem, therefore, that

(a) A reasonable arrangement is discernible in the provisions of the Code.

(a) A preamble.

(β) A general enactment.

(γ) Representative cases.

in order that these two cases of the marriage of near kin should not be made precedents, two particular provisions are expressly inserted.

1. While in verse 9 there are express prohibitions of marriage with both sister and half-sister, and with half-sister when daughter of the father as well as when daughter of the mother, in verse 11 the case of the half-sister, begotten of the father, is significantly repeated, and it is said with, what seems to us, an unnecessary insistence, "She is thy sister"; "The nakedness of thy father's wife's daughter, begotten of thy father, she is thy sister, thou shalt not uncover her nakedness." Here was the case of Abraham's marriage, the case of the *father's* daughter, whose near relationship tribes in a low state of morality shewed themselves so slow to recognise.

2. While marriage with a step-granddaughter is expressly prohibited in verse 17 as being "wickedness," the case of marriage with a wife's sister needs to be expressly guarded against in verse 18, even during the lifetime of the wife. This was the case of Jacob.

(b) The provisions of the Mosaic Code involve certain great principles.

While, however, it is not reasonable to look for either the exhaustive expression, or the exclusion of redundancy, which would be found in a modern code, the provisions of the Mosaic law do necessarily involve certain great principles, which are not difficult to apply.

(a) Blood-relationship an impediment.

(a) The first of these is that all persons nearly related by blood are by that relationship debarred from intermarriage. The prohibition extends practically to all ascendants and descendants, but only to the nearer cases of collaterals.

(β) Affinity an impediment.

(β) The next principle is that relationships of affinity, or connexion by marriage, as well as relationships of consanguinity, or connexion by heredity, are grounds for prohibition of marriage. The total number of prohibitions in the three Mosaic tables is 14, or, counting the doubtful case of the deceased wife's sister, 15. Of the 14, 6 are relationships of consanguinity, and 8 of affinity. There are therefore more express prohibitions of marriage on the ground of affinity than on the ground of consanguinity.

(γ) Another principle which is deducible from the code is

the principle that relationship through the woman is precisely (γ) analogous to relationship through the man. Thus there is equal prohibition of marriage with a son's daughter and with a daughter's daughter; with a father's sister and with a mother's sister; with a wife's son's daughter and with a wife's daughter's daughter. This principle, which is indeed obvious in itself, will enable us to construct an analogous table of prohibitions for the woman, the tables in the Mosaic law being tables of prohibition addressed only to the man.

TABLE II.

MARRIAGES FORBIDDEN TO THE WOMAN.

No.	Consanguinity or Affinity.	Relationships analogous to those in Table I.	Whether actually expressed in Table I.	Same relationships expressed from the side of the man.
1	Con.	Father.	...	Daughter.
2	Aff.	Mother's husband.	I.	
3	Con.	Brother.	I.	
4	Con.	Son's son.	...	Father's mother.
5	Con.	Daughter's son.	...	Mother's mother.
6	Con.	Father's brother.	...	Brother's daughter.
7	Con.	Mother's brother.	...	Sister's daughter.
8	Aff.	Mother's sister's husband.	...	Wife's sister's daughter.
9	Aff.	Daughter's husband.	I.	
10	Aff.	Sister's husband.	I.	
11	Aff.	Husband's son.	I.	
12	Aff.	Husband's father.	I.	
13	Aff.	Husband's son's son.	...	Father's father's wife.
14	Aff.	Husband's daughter's son.	...	Mother's father's wife.
		Additional prohibitions to the woman actually expressed in Table I.		Analogous relationships forbidden to the man.
15	Aff.	Husband's brother.	I.	Wife's sister.
16	Con.	Son.	I.	Daughter.
17	Con.	Father's father.	I.	Father's mother.
18	Con.	Mother's father.	I.	Mother's mother.
19	Con.	Brother's son.	I.	Brother's daughter.
20	Con.	Sister's son.	I.	Sister's daughter.
21	Aff.	Husband's brother's son.	I.	Wife's brother's daughter.
22	Aff.	Father's mother's husband.	I.	Father's father's wife.
23	Aff.	Mother's mother's husband.	I.	Mother's father's wife.

This table places us in a position to judge of the value of the statement made by Luther, and still not uncommonly made even in works of repute,¹ that the list in Leviticus xviii. was intended to be exhaustive; in other words, that all relationships not expressly forbidden in it must be understood to be sanctioned. If so, the Divine law sanctions the marriage of a woman with her father, with her grandsons, and with her uncles—a *reductio ad absurdum* which surely precludes the necessity of proving more at length the rightfulness of including in the prohibition the analogous relationships of Table II.

(δ)

A man and
his wife
are one
bāsār.

(δ) The next principle to be noted as characterising the scriptural prohibitions is the principle which governs relationship by affinity; viz., that a man and his wife are one *bāsār*, flesh or kin; and that accordingly the near of kin of the husband are forbidden to the wife, and *vice versā*. The eight relationships of affinity forbidden in Leviticus xviii. are these:

1. Father's wife.
2. Father's brother's wife.
3. Son's wife.
4. Brother's wife.
5. Wife's daughter.
6. Wife's mother.
7. Wife's son's daughter.
8. Wife's daughter's daughter.

Relationships of affinity are prohibited by most ancient codes, but the principles adduced to explain such prohibitions are not always the same. Thus the principle of household modesty, which precludes all persons living in the same household or under the same *patria potestas* from the possibility of marriage with one another, is sometimes adduced. Relationships by adoption, as well as those by affinity and consanguinity, will come under its influence. Another principle of prohibition, not altogether analogous to any principle recognised in the West, is the principle of *sapinda* relationship

¹ e.g. the article "Marriage," in Smith's *Dictionary of the Bible*, by the Rev. W. L. Bevan.

which governs the prohibitions of the Hindu law. But the Mosaic code is very clear in its statement, not only of a certain number of representative prohibitions, but of the true principle which must be held to underlie those prohibitions. "The nakedness of thy father's wife shalt thou not uncover: it is thy father's nakedness." Here is the principle; the father and the father's wife are one *bāsar*—one flesh, one kin. Union with an uncle's wife is forbidden, because "she is thine aunt." "Thou shalt not uncover the nakedness of thy brother's wife: it is thy brother's nakedness." Similarly a wife's daughter, her son's daughter, and her daughter's daughter are all to be avoided, "for they are her near kinswomen: it is wickedness." The Mosaic code may thus be said to be more careful in its statement of the true principle of affinity than in its enumeration of the cases of affinity which the principle covers. To make the application of the principle consistent, a third table must be framed, which will contain a total of 30 relationships. This table will be most familiar to English Churchmen if given in the order of the list appended to the 99th Canon, and commonly printed (by whatsoever authority) at the end of the Book of Common Prayer.

TABLE III.

No.	A Man may not marry his	Table I. Table II. or Affinity.	No.	A Woman may not marry with her	Table I. Table II. or Affinity.
1	Grandmother.	II.	1	Grandfather.	I.
2	Grandfather's wife.	II.	2	Grandmother's husband.	I.
3	Wife's grandmother.	Aff.(1)	3	Husband's grandfather.	Aff.(1)
4	Father's sister.	I.	4	Father's brother.	II.
5	Mother's sister.	I.	5	Mother's brother.	II.
6	Father's brother's wife.	I.	6	Father's sister's husband.	Aff.(4)
7	Mother's brother's wife.	Aff.(5)	7	Mother's sister's husband.	II.
8	Wife's father's sister.	Aff.(4)	8	Husband's father's brother.	Aff.(4)
9	Wife's mother's sister.	Aff.(5)	9	Husband's mother's brother.	Aff.(5)
10	Mother.	I.	10	Father.	II.
11	Step-mother (father's wife).	I.	11	Step-father (mother's husband).	I.
12	Wife's mother.	I.	12	Husband's father.	I.
13	Daughter.	II.	13	Son.	I.
14	Wife's daughter.	I.	14	Husband's son.	I.
15	Son's wife.	I.	15	Daughter's husband.	I.
16	Sister.	I.	16	Brother.	I.
17	Wife's sister.	II.	17	Husband's brother.	I.
18	Brother's wife.	I.	18	Sister's husband.	Aff.(16)
19	Son's daughter.	I.	19	Son's son.	II.
20	Daughter's daughter.	I.	20	Daughter's son.	II.
21	Son's son's wife.	Aff.(19)	21	Son's daughter's husband.	Aff.(19)
22	Daughter's son's wife.	Aff.(20)	22	Daughter's daughter's husband.	Aff.(20)
23	Wife's son's daughter.	I.	23	Husband's son's son.	II.
24	Wife's daughter's daughter.	I.	24	Husband's daughter's son.	II.
25	Brother's daughter.	II.	25	Brother's son.	I.
26	Sister's daughter.	II.	26	Sister's son.	I.
27	Brother's son's wife.	Aff.(25)	27	Brother's daughter's husband.	Aff.(25)
28	Sister's son's wife.	Aff.(26)	28	Sister's daughter's husband.	Aff.(26)
29	Wife's brother's daughter.	II.	29	Husband's brother's son.	I.
30	Wife's sister's daughter.	II.	30	Husband's sister's son.	Aff.(26)

This table, which is the recognised table of the English Church, is thus the table of the Mosaic code when the principles which that code necessarily involves are consistently applied. As the prohibitions of the Mosaic code are held to be binding even upon the heathen, they must be regarded as of Divine, and not merely of human, obligation. The English table may be said to be the most complete statement of the Divine laws in the matter. The Eastern and Western Churches have many more prohibitions than the prohibitions of this table, but they are not asserted to be of Divine obligation. On the other hand the Mosaic code expresses considerably fewer prohibitions, but the principles affirmed require that the prohibitions expressed shall be supplemented by the additional prohibitions of the table.

In reaching this table we do in fact reach the complete statement of Divine law in the matter. Christianity has nothing to add to it, nor may it take aught away.

(ε) Another principle of the Mosaic prohibitions may be said to be the principle of the magnet. The Eastern theology of marriage constantly employs the figure of magnetic attraction as the best explanation of the force of kindred in regard to marriage. Just as the magnet exercises its attraction with greater power on objects which are near, and with less power on objects which are farther off, while at length the attraction, though to a certain extent it still exists, is yet so weak as to be practically inoperative, similarly in the matter of marriage the prohibitive force of near relationship is great, and of more distant relationship less, while at length, though a certain influence may still be perceived, it is not strong enough to effect actual prohibition. The very varying force of prohibition, corresponding with a like variation in the degree of unholiness attaching to the unions prohibited, may be gathered from the variety of the punishments assigned. The worst forms of offence are punished with death. A man who offends with his father's wife or with his son's wife is to be put to death, together with the partner of his offence. A man who takes a wife and her mother is to be burnt with fire, both women sharing the punishment. Very different in heinousness

(ε)
The
principle
of the
"magnet."

is offence with a mother's sister or a father's sister. Such persons "shall bear their iniquity," an expression not altogether clear, but certainly indicating a punishment short of death. In two other cases childlessness is assigned as a penalty. If a man sin with his uncle's wife, "they shall bear their sin, they shall die childless." "And if a man shall take his brother's wife . . . they shall be childless." Yet in a particular case this last connexion was even enjoined.

(§)
The prin-
ciple of
limitation.

(§) Lastly may be noticed the principle of limitation. The general principle of limitation is indeed contained in what we have called the principle of the magnet. The prohibitive force of kinship in the matter of marriage ceases to be operative at a certain distance. From the Mosaic code we may, however, deduce certain subsidiary principles, by which to determine at what point prohibition may be held no longer to exist. They are as follows:

(1) *Consanguinity does not bar unless one of the parties is descended from the father or from the mother of the other.*

Thus uncle and niece may not marry, for the niece is descended from the uncle's father. First cousins may marry, for neither is descended from the father or from the mother of the other.

(2) *Affinity does not bar the relations of the husband from marriage with the relations of the wife.*

A man may not marry any of his wife's relations nearer in blood than he can of his own, nor may a woman marry any of her husband's relations nearer in blood than she can of her own. The wife becomes a member of the husband's family, and the husband becomes a member of the wife's family, but there is no fusion of the two families.

Hence a man and his son may marry a woman and her daughter, or two brothers may marry two sisters, or a man may marry the widow of his deceased brother-in-law.

(c) The
case of the
deceased
wife's sister
is included
under the

The case of the deceased wife's sister calls for particular notice. It is included under the principles which we have enumerated as necessarily contained in the provisions of the Mosaic Code. (1) It cannot be excluded on the ground that

it is a connexion of affinity, and not of consanguinity; for more than half the cases specified by the Mosaic Code are cases of affinity, and not of consanguinity. (2) It cannot be excluded on the ground that the analogous relation of the husband's brother is exempted, for marriage with a husband's brother is condemned in two of the Mosaic lists, and is even assigned the penalty of childlessness. The Levirate Law contemplated what was altogether an abnormal and special case, although, of course, its importance, as shewing the possibility of Divine dispensation under the circumstances of the Mosaic Code, is not to be passed by. (3) The principle underlying the prohibition of marriage on the ground of affinity, viz., that a man and his wife are one kin, applies with entire force to the case of the deceased wife's sister. (4) The principle of the magnet finds in marriage with the wife's sister one of the nearest of the relationships of affinity, and consequently the prohibitive force is not spent. (5) The subsidiary principles which mark the limits of prohibition do not apply to place this relationship outside those limits.

In any case, therefore, whether the wording of the Mosaic Code can or cannot be construed to concede a permission of marriage with the deceased wife's sister to the Hebrew man, as in the special case of the Levirate custom the Code certainly permitted the Hebrew woman to form a connexion with her deceased husband's brother, the entire rehabilitation of the Divine law in the Christian Church will exclude both. The conditions of unrestored humanity no longer exist for the restored. Neither divorce nor polygamy, neither marriage with the husband's brother nor with the wife's sister, can now be admitted in the body of Christ. As on the one hand, before Christ came, the most entire conformity with the requirements of the Divine laws would not have availed of itself to redeem a fallen soul, so, on the other hand, now that our Lord has effected the redemption, that entire conformity with the Divine laws is an essential condition of the acceptance of the individual in the ranks of the reconciled.

The much debated question as to the meaning of Leviticus xviii. 18 is not therefore of any final importance in determining

principles
laid down.

The
Christian
is bound,
howsoever
the
Levitical
provisions
may be
understood.

the duty of Christians in the matter. If GOD forbade the marriage of a wife's sister to the Israelites, it is fair to conclude that it is no less forbidden to Christians. If GOD suffered such marriage among the Israelites, such sufferance would appear to be analogous to the sufferance of (1) divorce, (2) polygamy, and (3) the Levirate custom, and to be no more extended to Christians than is the case with those practices.

Leviticus
xviii. 18.

Proceeding now to examine the verse, Leviticus xviii. 18, and its interpretation by the Jewish people in practice, we find that the verse has been rendered in two very different ways, and that in consequence it is sometimes taken to refer (1) to polygamy, and sometimes (2) to the wife's sister.

(a)
Some refer
it to
polygamy.

(a) It is contended by some that the passage does not refer to a wife's sister at all, but that it is a prohibition of polygamy. The phrase *ishah el achothah* is certainly open to the translation "one wife to another," or "one woman to another." So the Rev. C. Forster writes:

"The truth is that this phrase ('a woman to her sister'), together with the similar formula in the masculine, viz., 'a man to his brother,' occurs, with slight variations of the intervening preposition or conjunction, two-and-forty times in the Hebrew Bible, and that never once does it designate the blood relationship of two sisters or two brothers, but always and invariably means (when used of persons) simply two men together, or two women together; and when used of things (for it is used of things as well as of persons) it means two masculine or feminine things of the same kind. And it is actually thus translated in our Bible in thirty-two out of the forty-one other places where it occurs; and in the other nine places brother obviously does not refer to consanguinity, but to proximity. If, therefore, this expression designates, in Leviticus xviii. 18, the blood relationship of two sisters, I can only say that it is the solitary instance in the whole Bible where it has such a meaning."¹

The possibility of this interpretation "one woman to another" seems thus to be indisputable from the point of view of the Hebrew scholar; but it is urged against it,

- (1) That a prohibition of polygamy enters unnaturally into a list of prohibited degrees, whereas it would be

¹ Rev. C. Forster, *Marriage with two Sisters contrary to the Holy Law of God and Nature*. (London, 1850, p. 32.)

suitable enough for a prohibition of marriage with a wife's sister to follow, as this verse does, immediately after the prohibition of certain other unions of affinity, which are described as "wickedness."

- (2) That if polygamy is really forbidden by the Mosaic code we should expect the prohibition
 - (a) To be more prominently placed,
 - (b) To have attracted more attention.
- (3) That polygamy is admitted and legislated for in other provisions of the Mosaic code.
- (4) That polygamy was commonly practised among the Israelites without even the suggestion of hindrance from the administration of the law.
- (5) That with the exception of the small and insignificant sect of the Karaites the Jews never interpreted the verse as a prohibition of polygamy, but as a prohibition of marriage with a wife's sister.

(β) It is thus contended in the second place that the prohibition is a prohibition of marriage with the wife's sister, but those who are agreed upon this point differ among themselves as to whether the verse (1) prohibits marriage with a deceased wife's sister or (2) permits it, or (3) is not intended to touch upon it.

(β)
Others
refer it to
the wife's
sister.

In favour of the general contention that the verse has reference, not to polygamy, but to the wife's sister, are the arguments just cited. To these may be added the further argument, that the remarkable way in which this particular connexion of a man with his wife's sister receives a special application to the case of the living wife, is accounted for by the fact that the legislature had to take special notice of the two kinds of marriage which had come down to the Hebrew people, commended by the high examples of Abraham and Jacob. Those marriages had indeed been suffered by God in the period of transition in which He was first calling a covenanted family out from among the heathen, and then raising the covenanted family to be the chosen people; but from the chosen people a higher standard of morality was demanded

than even from those just ones who came out from the corruption of the race, as in later days a higher standard was to be demanded from Christians than is required of those who are outside Christianity. Accordingly, in the 18th chapter of Leviticus, the case of Abraham is specially met by the otherwise redundant provision of verse 11, and the case of Jacob is specially met by the provision of verse 18, now under consideration.

If it be admitted that the verse refers to a wife's sister, it may mean,

(1) That marriage with a wife's sister is prohibited in any case, even when the wife is dead.

Dr. Pusey says of the verse: "It is divided alike by the structure of the words, and by the Hebrew colon (so to call it), into two halves.

'A wife to her sister thou shalt not take:

To vex, *ad retegendam nuditatem ejus*; beside her; so long as she liveth.'

The first half is the absolute prohibition; the second consists of supplementary clauses."¹

Dr. Pusey's own view is that the verse prohibits polygamy; but others, taking the view that it has reference to the wife's sister, while retaining Dr. Pusey's division of the verse, argue that the first half is an absolute prohibition, intended to prohibit union with the wife's sister in any case, and that it comes in naturally, not to say necessarily, after the similar prohibition of marriage with a step-granddaughter on the ground that "it is wickedness." The second clause is then simply an added condemnation of the particular case which Jacob's example had seemed to sanction.

(2) That marriage with a wife's sister is permitted when the wife is dead.

If the passage be read through without stops, the prohibition may be said only to apply to the case of a wife's sister who is married in addition to the wife (i.) during her lifetime, and (ii.) with the intent or probable result of vexing her. This

¹ Dr. Pusey, *GOD'S Prohibition of the Marriage with a Deceased Wife's Sister*, p. 33.

interpretation, admitting marriage with the deceased wife's sister, has the important support of the traditional rendering of the majority of Jewish expositors.¹ The support of the Jewish teachers, however, is somewhat weakened by the fact that it is equally given to the case of marriage with a niece. Against this interpretation it is urged by some that "her lifetime" refers not to the wife, but to the wife's sister, who remains prohibited to the man as long as she lives. Others argue that the negative argument is essentially unsafe. Thus Bishop Jewell: "This reasoning *a negativis* is very weak, and makes no more proof in logic than this doth, 'Corvus non est reversus ad aream, donec exsiccatæ sunt aquæ,' *ergo* 'he returned again after the waters were dried up.' Or 'Joseph non cognovit eam, donec peperisset filium suum unigenitum,' *ergo* 'Joseph knew her after she was delivered of her first-begotten child,' or such other like."² Similarly S. Basil points out that the argument *a negativis* would admit of a man marrying two sisters at once, if only one did not vex the other.³

(3) The verse may be directed only to the particular instance prohibited, which was the case of Jacob's marriages, and may

¹ Yet not all. Thus the *Mishna*, Treatise *Yebamoth* iii. 7 rules: "When, of three brothers, two are married to two sisters, and one to a stranger; if one of them who married the sisters died, and he who had married the stranger marries the widow, and then the wife of the second brother dies, and also the third brother who had married the stranger, then the widow will be for ever prohibited to the second, or surviving brother, because she was for some time prohibited to him" (doubtless under Lev. xviii. 18). Similarly § 9.

Maimonides (A.D. 1135-1204) again says: "Brothers were considered as root and branch; and it was, therefore, forbidden to marry a Wife's Sister and a Brother's Wife, because this was uniting two individuals to a third person, who were, as it were, root and branch." [*The Reasons of the Laws of Moses, from the More Nevochim of Maimonides*, by James Townley, D.D. London, 1827.] See also "*The Guide of the Perplexed of Maimonides*," by Dr. Friedlander, London, 1885, vol. iii. p. 264. Dr. Friedlander holds that "there is no reason whatever to assume that, according to Maimonides, the prohibition of marrying the wife's sister remains in force even after the death of the former."

Philo had no doubt that the law prohibited marriage with two sisters, even when one was dead or divorced. Ζώσης γὰρ ἔτι τῆς συνοίκουσης εἶτε καὶ ἀπηλλαγμένης, εἴαν τε χηρέωσῃ, εἴαν τε καὶ ἐτέρῳ γαμηθῇ, τὴν ἀδελφὴν οὐχ ὅσιον ἵπελαβεν ἐπὶ τὰ τῆς ἡτευχκενίας παρέρχεσθαι. (*De specialibus legibus, quæ referuntur ad praeceptum vi et vii.*)

² Strype's Parker, App. B. 2, No. 19, from the MS. in C. C. College.

³ S. Basil, *Letter to Diodorus*.

not be rightly susceptible of any inference whatsoever, either for or against marriage with a deceased wife's sister.

No final
determina-
tion here
attempted.

In an argument thus hotly contested, and in regard to which so little ultimate agreement has yet been attained, no final determination need here be attempted. The present writer's convictions are on the whole in favour of the view that the verse refers not to polygamy, but to the wife's sister; that its significance is to be found in the fact that it formally prohibits the particular case which Jacob's example had seemed to sanction; and that outside that case the verse may have no application whatsoever.

For
Christian
practice
the verse
is of no
final signi-
ficance.

For the Divine law of marriage as binding upon Christians, the interpretation of Leviticus xviii. 18 is, as has been said, of no final significance. Granting, for the sake of argument, that the verse is even intended to permit marriages among the Israelites with the sisters of their deceased wives, the result of this permission would be to admit an exception analogous to the exception admitted by the Levirate custom. In that case, like the Levirate custom, and like divorce and polygamy, the marriage with a wife's sister will appear as a concession to the fallen and unredeemed, which could not be continued into the Christian state, in which the Spirit, dwelling in the members of the body, would require the full maintenance of the Divine laws of marriage. There is nothing which need startle in such a permission, if such a permission there was. The relation of the wife's sister is not a nearer relation than that of the husband's brother; and if both of these relationships are of nearer kin than some which are prohibited in all cases, they are also clearly indicated by the recorded gradations of punishment as being less unholy than certain other unions of affinity, as, for instance, the union with a stepmother, and than the analogous union of consanguinity, the marriage of brother and sister. It is conceivable, therefore, that while the more unholy unions were prohibited absolutely, even to the heathen, the less unholy might become the subjects of a temporary permission; and this is in fact the explanation we have already adopted in the matter of the Levirate custom.

That custom, which is the one certainly permitted deflection

from the laws prohibiting marriage in cases of near affinity, ^{d) The case of the Levirate law.} has been considered in Chapter V.

(ii.) *The New Testament.*

In the New Testament reference may be made to the following passages.

(a) *S. Matthew* xiv. 3, 4:

3. 'Ο γὰρ Ἡρώδης κρατήσας τὸν Ἰωάννην ἔδησεν αὐτὸν καὶ ἔθετο ἐν φυλακῇ, διὰ Ἡρωδιάδα τὴν γυναῖκα Φιλίππου τοῦ ἀδελφοῦ αὐτοῦ.

4. Ἐλεγε γὰρ αὐτῷ ὁ Ἰωάννης, Οὐκ ἐξεστὶ σοι ἔχειν αὐτήν.

3 For Herod had laid hold on John, and bound him, and put him in prison for Herodias' sake, his brother Philip's wife.

4 For John said unto him, It is not lawful for thee to have her.

(b) *S. Mark* vi. 17, 18:

17. Αὐτὸς γὰρ ὁ Ἡρώδης ἀποστείλας ἐκράτησε τὸν Ἰωάννην, καὶ ἔδησεν αὐτὸν ἐν τῇ φυλακῇ, διὰ Ἡρωδιάδα τὴν γυναῖκα Φιλίππου τοῦ ἀδελφοῦ αὐτοῦ, ὅτι αὐτὴν ἐγάμησεν.

18. Ἐλεγε γὰρ ὁ Ἰωάννης τῷ Ἡρώδῃ, Ὅτι οὐκ ἐξεστὶ σοι ἔχειν τὴν γυναῖκα τοῦ ἀδελφοῦ σου.

17 For Herod himself had sent forth and laid hold upon John, and bound him in prison for Herodias' sake, his brother Philip's wife: for he had married her.

18 For John had said unto Herod, It is not lawful for thee to have thy brother's wife.

(c) *S. Luke* iii. 19:

19. Ὁ δὲ Ἡρώδης ὁ τετράρχης, ἐλεγχόμενος ὑπ' αὐτοῦ περὶ Ἡρωδιάδος τῆς γυναίκος Φιλίππου τοῦ ἀδελφοῦ αὐτοῦ, καὶ περὶ πάντων ὧν ἐποίησε πονηρῶν ὁ Ἡρώδης.

19 But Herod the tetrarch, being reproved by him for Herodias his brother Philip's wife, and for all the evils which Herod had done.

S. John the Baptist incurred the displeasure of Herod Antipas and of Herodias because he said, "It is not lawful for thee to have her." The three evangelists place the unlawfulness of Herod's union in the fact that Herodias was "his brother Philip's wife." Considerable discussion has found place as to whether it was the remarriage after divorce or the nearness of affinity which S. John condemned. If only remarriage after divorce was in question, such remarriage would have been open to any Jew, and certainly no less to the Idumæan Herod. There can be little doubt, therefore, that it was the incestuous character of the union which S. John mainly condemned. And it should not be overlooked that the incestuous union thus condemned was the union of a woman

with her husband's *half*-brother. Herodias had been a gross offender in the matter of too near alliance. Her first husband, Herod Philip, was the full brother of her father Aristobulus, and therefore her own full uncle, while Herod Antipas, besides being the half-brother of Philip, was the half-uncle of Herodias.

(d) *1 Corinthians* v. 1-5:

Ὁ ΑΛΩΣ ἀκούεται ἐν ὑμῖν πορνεία, καὶ τοιαύτη πορνεία, ἣτις οὐδὲ ἐν τοῖς ἔθνεσιν ὀνομάζεται, ὥστε γυναῖκά τινα τοῦ πατρὸς ἔχειν·

2 Καὶ ὑμεῖς πεφυσιωμένοι ἐστέ, καὶ οὐχὶ μᾶλλον ἐπενθήσατε, ἵνα ἐξαρθῇ ἐκ μέσου ὑμῶν ὁ τὸ ἔργον τοῦτο ποιήσας;

3 Ἐγὼ μὲν γὰρ ὡς ἀπὼν τῷ σώματι, παρὼν δὲ τῷ πνεύματι, ἤδη κέκρικα ὡς παρὼν, τὸν οὕτω τοῦτο κατεργασάμενον,

4 Ἐν τῷ ὀνόματι τοῦ Κυρίου ἡμῶν Ἰησοῦ Χριστοῦ, συναχθέντων ὑμῶν καὶ τοῦ ἐμοῦ πνεύματος, σὺν τῇ δυνάμει τοῦ Κυρίου ἡμῶν Ἰησοῦ Χριστοῦ,

5 Παραδοῦναι τὸν τοιοῦτον τῷ Σατανᾷ εἰς ὄλεθρον τῆς σαρκὸς, ἵνα τὸ πνεῦμα σωθῇ ἐν τῇ ἡμέρᾳ τοῦ Κυρίου Ἰησοῦ.

It is reported commonly *that there is* fornication among you, and such fornication as is not so much as named among the Gentiles, that one should have his father's wife.

2 And ye are puffed up, and have not rather mourned, that he that hath done this deed might be taken away from among you.

3 For I verily, as absent in body, but present in spirit, have judged already, as though I were present, *concerning* him that hath so done this deed,

4 In the name of our Lord Jesus Christ, when ye are gathered together, and my spirit, with the power of our Lord Jesus Christ,

5 To deliver such an one unto Satan for the destruction of the flesh, that the spirit may be saved in the day of the Lord Jesus.

The sin which is here condemned, and for which so solemn a penalty is assigned, is clearly sin with a stepmother. Such a union was, as S. Paul indicates, an abomination even to the Roman. It was doubly inadmissible to the Christian.

2. MARRIAGES (F NEAR KIN OUTSIDE THE CHOSEN PEOPLE.
*AUTHORITIES AS TO THE ROMAN, HINDU, AND MUSULMAN
SYSTEMS OF LAW.*

GAIJ INSTITUTIONES.

Lib. i. §§ 58-64.¹

[Non omnes cives Romanas nobis uxores ducere licet]: Nam a quarundam nuptiis abstinere debemus. Inter eas enim personas quae parentum liberorumve locum inter se optinent, nuptiae contrahi non possunt, nec inter eas conubium est, veluti inter patrem et filiam vel

¹ Ed. Muirhead. Edinburgh, 1880.

matrem et filium vel avum et neptem; et si tales personae inter se coierint, nefarias et incestas nuptias contraxisse dicuntur et haec adeo ita sunt, ut quamvis per adoptionem parentum liberorumve loco sibi esse coeperint, non possint inter se matrimonio conjungi, in tantum ut etiam dissoluta adoptione idem juris maneat. Itaque eam quae mihi adoptione filiae seu neptis loco esse coeperit, non potero uxorem ducere, quamvis eam emancipaverim. Inter eas quoque personas quae ex transverso gradu cognatione junguntur, est quaedam similis observatio, sed non tanta. sane inter fratrem et sororem prohibita sunt nuptiae, sive eodem patre eademque matre nati fuerint sive alterutro eorum. sed si qua per adoptionem soror mihi esse coeperit, quamdiu quidem constat adoptio, sane inter me et eam nuptiae non possunt consistere; cum vero per emancipationem adoptio dissoluta sit, potero eam uxorem ducere; sic etiam si ego emancipatus fuero nihil impedimento erit nuptiis. Fratris filiam uxorem ducere licet: idque primum in usum venit cum divus Claudius Agrippinam fratris sui filiam uxorem duxisset: sororis vero filiam uxorem ducere non licet. et haec ita principalibus constitutionibus significantur. Item amitam et materteram uxorem ducere non licet; item eam, quae mihi quondam socrus aut nurus aut privigna aut noverca fuit. ideo autem diximus 'quondam,' quia si adhuc constant eae nuptiae, per quas talis adfinitas quaesita est, alia ratione mihi nupta esse non potest; quia neque eadem duobus nupta esse potest, neque idem duas uxores habere.

Ergo si quis nefarias atque incestas nuptias contraxerit, neque uxorem habere videtur neque liberos. itaque hi qui ex eo coitu nascuntur matrem quidem habere videntur, patrem vero non utique, nec ob id in potestate ejus sunt, [sed tales sunt] quales sunt hi quos mater vulgo concepit: nam et hi patrem habere non intelleguntur, cum is etiam incertus sit; unde solent spurii filii appellari, vel a Graeca voce quasi *σποράδην* concepti, vel quasi sine patre filii.

JUSTINIAN.

Institutes, i. 10.

Ergo non omnes nobis uxores ducere licet: nam quarundam nuptiis abstinendum est. Inter eas enim personas, quae parentum liberorumve locum inter se optinent, nuptiae contrahi non possunt, veluti inter patrem et filiam vel avum et neptem vel matrem et filium vel aviam et nepotem et usque ad infinitum: et si tales personae inter se coierint, nefarias atque incestas nuptias contraxisse dicuntur. Et

haec adeo ita sunt, ut, quamvis per adoptionem parentum liberorumve loco sibi esse coeperint, non possint inter se matrimonio jungi in tantum, ut etiam dissoluta adoptione idem juris maneat: itaque eam quae tibi per adoptionem filia aut neptis esse coeperit, non poteris uxorem ducere, quamvis eam emancipaveris.

Inter eas quoque personas, quae ex transverso gradu cognationis junguntur, est quaedam similis observatio, sed non tanta. Sane enim inter fratrem sororemque nuptiae prohibitaе sunt, sive ab eodem patre eademque matre nati fuerint, sive ex alterutro eorum. Sed si qua per adoptionem soror tibi esse coeperit, quamdiu quidem constat adoptio, sane inter te et eam nuptiae consistere non possunt: cum vero per emancipationem adoptio dissoluta sit, poteris eam uxorem ducere: sed et si tu emancipatus fueris, nihil est impedimento nuptiis. Et ideo constat, si quis generum adoptare velit, debere eum ante filium suum emancipare: et si quis velit nurum adoptare, debere eum ante filium emancipare. Fratris vel sororis filiam uxorem ducere non licet. Sed nec neptem fratris vel sororis ducere quis potest, quamvis quarto gradu sint. Cujus enim filiam uxorem ducere non licet, ejus neque neptem permittitur. Ejus vero mulieris, quam pater tuus adoptavit, filiam non videris impediri uxorem ducere, quia neque naturali neque civili jure tibi conjungitur. Duorum autem fratrum vel sororum liberi vel fratris et sororis jungi possunt. Item amitam licet adoptivam uxorem ducere non licet, item materteram, quia parentum loco habentur. Qua ratione verum est magnam quoque amitam et materteram magnam prohiberi uxorem ducere. Adfinitatis quoque veneratione quarundam nuptiis abstinere necesse est. Ut ecce privignam aut nurum uxorem ducere non licet, quia utraque filiae loco sunt. Quod scilicet ita accipi debeat, si fuit nurus aut privigna: nam si adhuc nurus est, id est si adhuc nupta est filio tuo, alia ratione uxorem eam ducere non possis, quia eadem duobus nupta esse non potest: item si adhuc privigna tua est, id est si mater ejus tibi nupta est, ideo eam uxorem ducere non poteris, quia duas uxores eodem tempore habere non licet. Socrum quoque et novercam prohibitum est uxorem ducere, quia matris loco sunt. Quod et ipsum dissoluta demum adfinitate procedit: alioquin si adhuc noverca est, id est si adhuc patri tuo nupta est, communi jure impeditur tibi nubere, quia eadem duobus nupta esse non potest: item si adhuc socrus est, id est si adhuc filia ejus tibi nupta est, ideo impediuntur nuptiae, quia duas uxores habere non possis. Mariti tamen filius ex alia uxore et uxoris filia ex alio marito vel

contra matrimonium recte contrahunt, licet habeant fratrem sororemve ex matrimonio postea contracto natos. Si uxor tua post divortium ex alio filiam procreaverit, haec non est quidem privigna tua: sed Julianus hujusmodi nuptiis abstinere debere ait: nam nec sponsam filii nurum esse nec patris sponsam novercam esse, rectius tamen et jure facturos eos, qui hujusmodi nuptiis se abstinuerint. Illud certum est serviles quoque cognationes impedimento esse nuptiis, si forte pater et filia aut frater et soror manumissi fuerint. Sunt et aliae personae, quae propter diversas rationes nuptias contrahere prohibentur, quas in libris digestorum seu pandectarum ex veteri jure collectarum enumerari permisimus.

Si adversus ea quae diximus aliqui coierint, nec vir nec uxor nec nuptiae nec matrimonium nec dos intellegitur. Itaque ii, qui ex eo coitu nascuntur, in potestate patris non sunt, sed tales sunt, quantum ad patriam potestatem pertinet, quales sunt ii, quos mater vulgo concepit. Nam nec hi patrem habere intelleguntur, cum is etiam incertus est: unde solent filii spurii appellari, vel a Graeca voce, quasi *σποράδην* concepti vel quasi sine patre filii. Sequitur ergo, ut et dissoluto tali coitu nec dotis exactioni locus sit. Qui autem prohibitas nuptias coeunt, et alias poenas patiuntur, quae sacris constitutionibus continentur.

CODEx JUSTINIANUS, V. iv. 17.¹

Impp. Diocletianus et Maximianus AA. et CC.

Nemini liceat contrahere matrimonium cum filia nepte pronepte, itemque matre avia proavia et ex latere amita ac matertera, sorore sororis filia et ex ea nepte, praeterea fratris filia et ex ea nepte, itemque ex adfinibus privigna noverca nuru socru ceterisque, quae jure antiquo prohibentur: a quibus cunctos volumus abstinere.

D. K. Mai. Damasco Tusco et Anullino cons.

[a. 295.]

CODEx THEODOSIANUS, III. xii. 1.²

Impp. Constantius et Constans AA. ad provinciales Phoenices.

Si quis filiam fratris sororisve faciendam crediderit abominanter uxorem aut in ejus amplexum, non ut patruus aut avunculus convolverit, capitalis sententiae poena teneatur.

Dat. prid. Kal. Apr. Antiochiae,

Constantio III. et Constante II. AA. Coss.

[A.D. 342.]

¹ Krueger, in the *Corpus Juris Civilis*; Berlin, 1877.

² Haenel's Ed. p. 322.

ULPIAN, V. 6.¹

Inter parentes et liberos infinite cujuscumque gradus [*sint*] conubium non est. Inter cognatos autem ex transverso gradu olim quidem usque ad quartum gradum matrimonia contrahi non poterant: nunc autem etiam ex tertio gradu licet uxorem ducere, sed tantum fratris filiam, non etiam sororis filiam aut amitam vel materteram, quamvis eodem gradu sint. *Eam quae* noverca vel privigna vel nurus vel socrus nostra fuit [*uxorem*] ducere non possumus.

CODEx THEODOSIANUS, III. xii. 3.

Impp. Arcadius et Honorius AA. Eutychiano Pf. P.

Manente circa eos sententia, qui post latam dudum legem quoquomodo absoluti sunt aut puniti, si quis incestis posthac consobrinae suae vel sororis aut fratris filiae uxorisve vel ejus postremo, cujus vetitum damnatumque conjugium est, sese nuptiis funestavit, (The remainder concerns the penalties, which are mitigated.)

Dat. VI. Id. Decemb. Constantinopoli,

Arcadio IV. et Honorio III. AA. Coss.

[A.D. 396.]

CODEx JUSTINIANUS, V. 4. 19.

Impp. Arcadius et Honorius AA. Eutychiano pp.

Celebrandis inter consobrinis matrimoniis licentia hujus legis salubritate indulta est, ut revocata prisci juris auctoritate restinctisque calumniarum fomentis matrimonium inter consobrinis habeatur legitimum, sive ex duobus fratribus sive ex duabus sororibus sive ex fratre et sorore nati sunt, et ex eo matrimonio editi legitimi et suis patribus successores habeantur.

D. III. Id. Iun. Nicaeae Stilichone II. et Anthemio cons.

[a. 405.]

CODEx THEODOSIANUS, III. xii. 2.²

Impp. Constantius et Constans AA. et Julianus Caesar ad Volusianum Vicarium Urbis.

Etsi licitum veteres crediderunt, nuptiis fratris solutis ducere fratris uxorem, licitum etiam, post mortem mulieris aut divortium contrahere cum ejusdem sorore conjugium, abstineant hujusmodi nuptiis universi

¹ Muirhead's Ed. p. 371.

² Haenel's Ed. p. *322.

nec aestiment, posse legitimos liberos ex hoc consortio procreari : nam spurios esse convenit, qui nascentur.

Dat. prid. Kal. Maii Roma,

Arbetione et Lolliano Coss.

[A.D. 355.]

CODEx JUSTINIANUS, V. 5. 5.

Imppp. Valentinianus Theodosius et Arcadius AAA. Cynegio pp.

Fratris uxorem ducendi vel duabus sororibus conjungendi penitus licentiam submovemus, nec dissoluto quocumque modo conjugio.

D . . . k. Dec. Constantinopoli Theodosio

A. III. et Abundantio cons. [a. 393.]

CODEx THEodosIANUS, III. 12. 4.¹

Impp. Honorius et Theodosius AA. Aureliano II. Pf. P.

Tanquam incestum commiserit habeatur, qui post prioris conjugis amissionem sororem ejus in matrimonium proprium crediderit sortiendam ; pari ac simili ratione etiam, si qua post interitum mariti in germani ejus nuptias crediderit adspirandum : illo sine dubio insecuturo, quod ex hoc contubernio nec filii legitimi habebuntur, nec in sacris patris erunt, nec paternam ut sui suscipient hereditatem.

Dat. XVII. Kal. Iun. Constantinopoli

DD. NN. Honorio X. et Theodosio VI. AA. Coss.

[A.D. 415.]

CODEx JUSTINIANUS, V. 4. 26.

Imp. Justinianus A. Juliano pp.

Ea videlicet persona omnimodo ad nuptias venire prohibenda, quam aliquis, siue alumna sit siue non, a sacrosancto suscepit baptismo, cum nihil aliud sic inducere potest paternam adfectionem et justam nuptiarum prohibitionem, quam hujusmodi nexus, per quem deo mediante animae eorum copulatae sunt.

D. k. Oct. Constantinopoli Lampadio et Oreste

vv. cc. cons. [a. 530.]

BANERJEE, DR. GOOROODASS.

*The Hindu Law of Marriage and Stridhan.*²

Girls related to a man within certain degrees of relationship, commonly called the prohibited degrees, are not to be taken in marriage by him.

¹ Haenel's Ed. p. * 328. ² Tagore Law Lectures, 1878, pp. 59 *sqq.*

Marriage between near blood relations is so universally repugnant to our feelings, that every system of law has its rule of prohibited degrees. The prohibition is also extended by analogy more or less to relations by affinity, fosterage, and adoption. I shall first of all give you the rules regarding prohibited degrees in the Hindu law, and then compare them with those of other systems.

These rules are chiefly based upon the following texts :

I. "She who is not descended from his paternal or maternal ancestors within the sixth degree (*sapinda*), and who is not known by his family name to be of the same primitive stock with his father or mother, is eligible by a twice born man for nuptials and holy union." (Manu, iii. 5.)

Sapinda is the word in the original which has been rendered as *descended from ancestors within the sixth degree*; that is, from persons in the ascending line within the seventh degree from the intending husband. This rendering is in accordance with the text of Manu (v. 60), which says that the *sapinda* relationship ceases with the seventh person.

II. "Having finished his studentship, let a man espouse a girl endowed with good qualities, one who was never married before, who is possessed of beauty, is not a *sapinda*, and is younger in age." (Yajnavalkya, i. 52.)

As it is of importance that you should clearly understand the import of the word *sapinda*, I shall here subjoin the very full explanation of it given by Vijnaneswar¹ in his commentary on the above text.

"(He should marry a girl) who is non-sapinda (with himself). She is called his sapinda who has (particles of) the body (of some ancestor, &c.) in common (with him). Non-sapinda means not his sapinda. Such an one (he should marry). Sapinda-relationship arises between two people through their being connected by particles of one body. Thus, the son stands in sapinda-relationship to his father because of particles of his father's body having entered (his). In like (manner stands the grandson in sapinda-relationship) to his paternal grandfather and the rest, because through his father particles of his (grandfather's) body have entered into (his own). Just so is (the son a sapinda-relation) of his mother, because particles of his mother's body have entered (into his). Likewise (the grandson stands in sapinda-relationship) to his maternal grandfather and the

¹ *Mitakshara (sans) Acharadhyaya*, leaf 6 et seq.

rest through his mother. So also (is the nephew) a sapinda-relation of his maternal aunts and uncles, and the rest, because particles of the same body (the paternal grandfather) have entered into (his and theirs); likewise (does he stand in sapinda-relationship) with paternal uncles and aunts and the rest. So also the wife and the husband (are sapinda-relations to each other), because they together beget one body (the son). In like manner, brother's wives also are (sapinda-relations to each other), because they produce one body (the son) with those (severally) who have sprung from one body (*i.e.* because they bring forth sons by their union with the offspring of one person, and thus their husbands' father is the common bond which connects them). Therefore, one ought to know that, wherever the word sapinda is used, there exists (between the persons to whom it is applied) a connection with one body, either immediately or by descent.¹

“In the explanation of the word *asapinīdam* (non-sapinda, verse 52), it has been said that sapinda-relation arises from the circumstance that particles of one body have entered into (the bodies of persons thus related), either immediately or through (transmission by) descent. But inasmuch as (this definition) would be too wide, since such a relationship exists in the eternal circle of births, in some manner or other, between all men, therefore the author (Yajñavalkya) says, verse 53: ‘After the fifth ancestor on the mother's, and after the seventh on the father's.’ On the mother's side, in the mother's line, after the fifth; on the father's side, in the father's line, after the seventh (ancestor) the sapinda-relationship ceases; these latter two words must be understood; and, therefore, the word Sapinda, which on account of its (etymological) import ‘(connected by having in common) particles (of one body)’ would apply to all men, is restricted in its signification, just as the word *paṇkāja* (which etymologically means ‘growing in the mud,’ and therefore would apply to all plants growing in the mud, designates the lotus only), and the like; and thus the six ascendants beginning with the father, and the six descendants beginning with the son, and one's self (counted) as the seventh (in each case), are sapinda relations. In case of a division of the line also one ought to count up to the seventh (ancestor), including him with whom the division of the line begins (*e.g.* two

¹ Vijnaneswar further explains that since some limitation is necessary, it is taken at the seventh ancestor, including the person with whom the computation starts.—O. D. W.

collaterals A and B are sapindas, if the common ancestor is not further removed from either of them than six degrees), and thus must the counting of the (sapinda-relationship) be made in every case."

I ought to add here that the word *sapinda* has, in other places, a meaning different from what is given above. Thus in the chapter on inheritance in the Code of Manu (ix. 186, 187) a *sapinda* means one who is related within the third degree, the *sapinda* relation being there based not on connection through one common body, but on connection through common oblation.

III. "One must not marry a girl of the same *gotra* or *pravaras*, or as far as the fifth in degree from the mother, and seventh from the father." (Vishnu Sutra, cited in the Udvahatattwa.)

IV. "Girls descended from the father's or mother's *bandhus* are not to be taken in marriage as far as the seventh and fifth respectively, as well as those of the same *gotra*, or of equal *pravaras*." (Narada, cited in the Udvahatattwa.)

The word *bandhu*, which occurs in the above text, has been defined in a text quoted anonymously in the Udvahatattwa, which runs thus: "The sons of his father's paternal aunt, the sons of his father's maternal aunt, and the sons of his father's maternal uncle must be considered his father's *bandhus*. The sons of his mother's maternal aunt, the sons of his mother's paternal aunt, and the sons of his mother's maternal uncle must be reckoned his mother's *bandhus*."

From these texts and a few others, commentators have deduced the following rules :

Rule I. (a) The female descendants as far as the seventh degree, from the father and his six ancestors, namely, the paternal grandfather, &c.,

(b) The female descendants as far as the seventh degree, from the father's *bandhus*, and their six ancestors, through whom those females are related,

(c) The female descendants as far as the fifth degree, from the maternal grandfather and his four ancestors, namely, the maternal great-grandfather, &c., and

(d) The female descendants, as far as the fifth degree, from the mother's *bandhus* and their four ancestors, through whom those females are related,
are not to be taken in marriage.

Rule II. A stepmother's brother's daughter, and his daughter's daughter, are not to be taken in marriage.

(After some further explanations, and the enumeration of certain exceptions admitted in practice, Dr. Banerjee proceeds as follows.)

The rules as to prohibited degrees, subject of course to the exceptions noticed above, are absolutely imperative in their nature, and would nullify any marriage contracted in contravention of them.

The prohibition by reason of affinity, which exists in other systems, has no place in Hindu law. But the prohibition of marriage with *sapindas* to some extent supplies its place, and so did the prohibition of widow marriage. The Hindu law, however, does not prohibit marriage with the wife's sister, or even with her niece or her aunt. The prohibition on the ground of adoption resembles, to some extent, the corresponding provision in the Roman law, and the prohibition by reason of fosterage in the Mahomedan law.

It is thought by some that the rule is based upon physical grounds, and that it is meant to prevent that physical degeneracy of the race which marriages between near relations would lead to. That may be true, but there is a still stronger reason for the rule: it is intended to prevent moral degeneracy, and consequent social evils which would otherwise result.

The Hindus in those days lived in joint families, and under the same roof for generations together; and their remote collaterals (of course, on the paternal side only) were brought into contact in the same way as brothers and sisters in modern society. The prohibition of marriage between remote collaterals was not, therefore, as unnecessary as it may now seem to be. The rule when once established for the paternal side, was extended to the maternal side by analogy.

BAILLIE, NEIL B. E.

*A Digest of Moohummedan Law. (Hanifeea.)*¹

Ch. III.

Of women who are unlawful or prohibited. Of these there are nine classes.

Class first,

Or such as are Prohibited by reason of Nusub or Consanguinity.

¹ 2nd Edition, London, 1875.

These are mothers, daughters, sisters, aunts paternal and maternal, brothers' daughters and sisters' daughters; and marriage or sexual intercourse with them, or even soliciting them to such intercourse, is prohibited for ever, that is, at all times and under any circumstances.

Mothers are a man's own mother, and his grandmothers by the father's or mother's side, and how high soever. Daughters are the daughters of his loins, and the daughters of his sons or daughters how low soever. Sisters are the full sisters, and the half-sister by the father or the mother. And so as to the daughters of the brother and sister, and how low soever. Paternal aunts are of three kinds, the full paternal aunt, the half-paternal aunt by the father (that is, the father's half-sister by his father), and the half-paternal aunt by the mother (or the father's half-sister by his mother). And so also the paternal aunts of his father, the paternal aunts of his grandfather, and the paternal aunts of his mother and grandmothers. Maternal aunts are the full maternal aunt, the half-maternal aunt by the father (that is, the mother's half-sister by her father), and the half-maternal aunt by the mother (or the mother's half-sister by her mother), and the maternal aunts of fathers or mothers.

Class second,

Or such as are Prohibited by reason of Affinity, and of these there are four degrees.

The first are the mothers of wives, and their grandmothers by the father's or mother's side. The second are the daughters of a wife or of her children, how low soever . . . The third degree of affinity comprises the wife of a son, or of a son's son, or of a daughter's son, how low soever . . . ; but the wife of an adopted son is not prohibited to the adopted father. The fourth degree are the wives of fathers and of grandfathers, whether on the father's or mother's side, and how high soever. And with all these marriage or sexual intercourse is prohibited for ever.

Class third,

Or women who are Prohibited by reason of Fosterage.

Every woman prohibited by reason of consanguinity and affinity is prohibited also by fosterage, as will be explained in the Book of Fosterage.

Class fourth,

Or women who cannot be lawfully joined together.

Second, with regard to the joining together of women who are relatives. It is not lawful to cohabit with two sisters, either in marriage or by right of property, whether they be sisters by consanguinity or fosterage. The general principle with regard to the joining together of women is, that it is not lawful to join together any two women, who, if we suppose one of them on whichever side to be a male, could not lawfully intermarry by reason of consanguinity or fosterage. Hence it is not lawful to join a woman with her paternal or maternal aunt by consanguinity or fosterage, but it is lawful to join a woman with her husband's daughter.

The rules above-mentioned with regard to two sisters apply equally to all other near relatives who cannot be lawfully joined together in connection with a man. And if a man desire to marry one of the two, after separating from the other, he is at liberty to do so, provided that the separation takes place before consummation; but if it do not take place till after the consummation, he must wait till the expiration of both their *idduts*.

(In the following paragraph Mr. Baillie explains how the same prohibition extends to *concubines*, and with the same limitation.)

*A Digest of the Moohummedan Law. The Imameea Code.*¹

Among the consequences of affinity is the prohibition of a wife's sister in conjunction with the wife, or of a wife's niece in conjunction with her without her permission. With such permission the conjunction is quite lawful. The paternal or maternal aunt of a wife may be taken in conjunction with her, even against the wife's will. But if a man should marry his wife's niece, whether the daughter of her brother or sister, without the wife's permission, the contract would be void. Some of our doctors are of opinion that in such a case the wife would have an option, and might either allow the second marriage, or cancel it without the cancellation being a divorce. But the first opinion, according to which the contract is actually void, is the most valid.

The laws and customs of the various races of mankind outside Christianity are of interest as indicating the existence of a *pudor naturalis* with regard to unions of very near kin. The *pudor naturalis* exemplified by

¹ Page 23 (London, 1869).

limits of the present work will not admit of any exhaustive research into the manifold legal systems and customary regulations of non-Christian peoples; but a brief enquiry into the provisions of the Roman, the Hindu, and the Musulman systems of law will afford instances in very varied communities of the same general character of feeling, and will thus go to shew that the prohibitions of the Mosaic Code, which were held by God to be no less binding on the Gentiles than on the chosen people, are not without their counterpart in the instinctive conscience of the race. The Roman and the Hindu prohibitions will be instances of the traditions of the Aryan stock, while the Musalman Code, not indeed entirely independent of the Mosaic, will, with the Mosaic, exemplify the provisions which were possible with and acceptable to the Semitic peoples. These three particular systems are chosen because, while answering this general purpose of illustrating a common instinct, they are at the same time of practical utility in other directions, the Roman as throwing light upon Christian feeling and Christian enactments, and the Hindu and Musalman as being of immediate value to residents in India.

(a) The
Roman
Law.

The prohibitions of the Roman Law can be best seen by the juxtaposition of the sections bearing on the subject from (1) the *Institutes of Gaius* and (2) the *Institutes of Justinian*.

Gaius, probably born in the reign of Hadrian (A.D. 117–138), and whose writings may be assigned to the reigns of Antoninus Pius (A.D. 138–161), Marcus Aurelius Antoninus (A.D. 161–180), and Commodus (A.D. 180–192), may be taken as repeating the ancient customary law of the Roman people with such slight modifications as had been introduced in historic times. The *Institutes of Justinian* (A.D. 533), as will be seen, reproduce the prohibitions of Gaius word for word, only altering them where the legislation of the intervening centuries had introduced changes. These changes had obviously been introduced, in part at least, as a result of Christian influences; and a comparison of the two texts enables us at once to state (1) the original Roman Law on the subject while as yet untouched by Christian feeling, and (2) the result of the influence of the first five centuries of Christianity upon that law.

The prohibitions of Gaius may be summarised as follows:

(α) Consanguinity.

1. Ascendants and descendants in whatsoever degree.
2. Collaterals as follows:
 - (i.) Brother and sister (whole or half).
 - (ii.) Uncle and sister's daughter.
 - (iii.) Nephew and aunt (whether father's or mother's sister).

(β) Affinity.

A man and his

1. $\left\{ \begin{array}{l} \text{i. Mother-in-law} \\ \text{ii. Step-mother} \end{array} \right\}$ as in place of the mother.
2. $\left\{ \begin{array}{l} \text{iii. Daughter-in-law} \\ \text{iv. Step-daughter} \end{array} \right\}$ as in place of a daughter.

(γ) Adoption.

1. Ascendants and descendants,
the prohibition remaining even after the adoption has been removed by emancipation.
2. Collaterals, as under *Consanguinity*,
but in all such cases of collaterals the prohibition only holds so long as the adoption holds.¹

Under the head of consanguinity this list omits one prohibition of the ancient customary law of Rome, viz., the prohibition of the marriage of an uncle with a niece who is the daughter of his brother. This prohibition had been removed in favour of the Emperor Claudius, who wished to marry his niece Agrippina. The concession was by no means in accordance with the sentiments of the people, and in the time of Diocletian and Maximian (A.D. 295) was no longer recognised.² Constantius and Constans (A.D. 342)³ declared such unions to be abominable, and visited them with capital punishment. The marriage of an uncle with a niece who was the daughter of his sister was at no time recognised by the Roman law.

¹ *Gaii Institutiones*, i. §§ 58-64.

² *Codex Justinianus* V. iv. 17.

³ *Codex Theodosianus* III. xii. 1.

It appears also from Ulpian that under the ancient law of Rome the marriage of first cousins was unknown.¹ It gradually came to be permitted, but in the fourth century was again held to be unlawful. Theodosius I.² appears to have held it unlawful, but open to dispensation (c. A.D. 384); and by Arcadius and Honorius it was stigmatised as incest in A.D. 396;³ but the same emperors made it lawful in A.D. 405,⁴ and their enactment is retained in the Code of Justinian.

As regards marriages of affinity, while the old Roman law prohibited marriage with a mother-in-law and with a step-mother, with a daughter-in-law and with a step-daughter, there was no prohibition of marriage with a brother's wife, or with a wife's sister. The first prohibition of marriage with a deceased wife's sister is to be found in a law of Constantine II. and Constans (A.D. 355),⁵ which must almost certainly be referred to Christian influences, since the influences of non-Christian practice in the Empire appear to have been in no way opposed to such marriages. Valentinian, Theodosius, and Arcadius (A.D. 383)⁶ repeated the prohibition, which accordingly finds place in the Code of Justinian, though it is omitted in the Institutes.

In certain cases Roman usage extended the prohibition of marriages of affinity beyond the limitations of the Mosaic Code. By that code, as has been seen, a man might not marry any of his wife's relations nearer in blood than he could of his own, and similarly a woman with her husband's relations; but in no case did the prohibition extend to the marriage of the relations of the wife with the relations of the husband. In the Roman law, however, this limitation did not universally apply. It recognised an inferior degree of affinity which could be carried on through a second marriage, and which may be styled *affinity*

¹ Ulpian v. 6.

² *Codez Theodosianus* III. 10. 1: "Exceptis his quos consobrinorum, hoc est quatuor gradus, conjunctionem lex triumphalis memorie patris nostri exemplo indolentium, supplicare non vetavit."

³ *Codez Theodosianus* III. xii. 3.

⁴ *Codez Justinianus* V. 4. 14.

⁵ *Codez Theodosianus* III. xii. 2.

⁶ *Codez Justinianus* V. 5. 5; see also *Codez Theodosianus* III. 12. 4.

of two marriages. Thus if a step-son died and left a widow, the step-father was not permitted to marry her. Similarly if a woman had a step-daughter, and the step-daughter died, it was not open to the woman to marry the step-daughter's husband. In both of these cases two marriages intervened between the parties; and hence, to use the modern phrase, they are said to be barred by "affinity of two marriages." And it is important to put the prohibition in this way, as it was by taking it in this way, and then extending the principle, that the Eastern churches arrived at their system of prohibition in cases of such "affinity of two marriages," or "affinity of the second degree"; a system of prohibitions unknown to the Mosaic Code, and to Western Christendom. But in truth, although we may characterise the prohibitions of these marriages as grounded on the "affinity of two marriages," the Roman had in view nothing less than this affinity. His real ground of prohibition was not affinity, but the *respectus parentelæ*. Persons in the family who stood to one another in the relation of ascendants and descendants were barred from marriage for the whole term of their lives, even though such relationships arose not even from affinity, but only from adoption, as will presently be noticed; and beyond all doubt it was this *respectus parentelæ*, and not the affinity, which was the legal principle at the bottom of the prohibition in cases of "affinity of two marriages." In the cases of collaterals, where the *respectus parentelæ* did not come in, no such limitations had force.

A class of prohibitions occurs in the law of Rome which is not found in the Mosaic code; viz. the prohibition of the marriage of all persons related by adoption in any degree which would be a bar to marriage if the relationship were by consanguinity. There is here, however, a distinction. While the marriage of those related by adoption as ascendants and descendants is peremptorily barred for life, even though the adoption have been brought to an end by the process of emancipation, persons who are connected by adoption in collateral relationships are only barred from marriage so long as the adoption lasts.

The prohibition of marriage to those related by adoption appears to be connected with the Roman principle of the *patria potestas*, or, more generally, with the Aryan view of the supreme authority of the house-father. It has some remarkable analogies in the Indian system. Whosoever, by coming within the sacred circle of the family, was admitted to its intimacies, was, as a condition of those intimacies, to be debarred from intermarriage, that so the sacredness of family life might be preserved from contamination at its source. The prohibitions of marriage on the ground of relationship by adoption may be described as the extension of prohibition from a class of cases in which the natural conscience made it imperative, to a class of cases in which circumstances made it expedient.

The principal importance of these prohibitions as regards Christian marriage is to be found in the extension, or rather transference, of the system to so-called spiritual relationships, which, while unknown to Christian antiquity, are already found in the Code of Justinian.¹

If now we examine the sections quoted from the Institutes of Justinian, the prohibitions may be thus classified :

(*a*) Consanguinity.

1. Ascendants and descendants in whatsoever degree.

2. Collaterals as follows :

(i.) Brother and sister (whole or half).

(ii.) Uncle and niece (whether brother's or sister's daughter).

Uncle and grand-niece (whether brother's or sister's grand-daughter).

(iii.) Nephew and aunt (father's or mother's sister).

Nephew and great-aunt (paternal or maternal).

(*β*) Affinity.

A man and his

1. { i. Mother-in-law
ii. Step-mother } as in place of the mother.

¹ *Codex Justinianus*, V. 4. 26.

2. {
 iii. Daughter-in-law
 iv. Step-daughter
 v. Daughter of divorced wife
 } as in place of a daughter.
3. (Code of Justinian) i. Wife's sister
 ii. Brother's wife } as in place of a sister.

(γ) Adoption.

1. Ascendants and descendants,
 the prohibition remaining even after the adoption has been removed by emancipation.
2. Collaterals, as under *Consanguinity*,
 but in all cases of collaterals, the prohibition only holds so long as the adoption holds.¹

It appears, therefore, that as compared with the provisions of the Institutes of Gaius, the legislation of Justinian has restored the ancient law of Rome as regards the marriage of uncle and niece, and has added, doubtless under Christian influences, the prohibition of marriage with the wife's sister and with the brother's wife. As compared with the Anglican table, the legislation of Justinian is deficient as regards prohibitions of marriage between uncle and niece by affinity, and nephew and aunt by affinity; and travels outside the table in the provisions as to relationship by adoption.

For the Hindu law of marriage it is sufficient to cite the careful statement of Professor Gooroodass Banerjee in the valuable Tagore Lectures for 1878, entitled *The Hindu Law of Marriage and Stridhan*. The passage printed above not only gives Professor Banerjee's summing-up, itself of great authority, but refers to the ultimate texts, the *Code of Manu*, the *Yajnavalkya*, and the *Udvahatattva*. Especially worthy of notice is the explanation of *sapinda*-relationship, which is quoted from the celebrated commentator Vijnaneswar.

The relationships of consanguinity which present a bar to intermarriage may, for comparison with the Roman system, be classified as follows:

1. Ascendants and descendants within the sixth degree
 (otherwise all possible ascendants and descendants).

¹ Justinian, *Institutes*, i. 10.

2. Collaterals who are descended from paternal or maternal ancestors within the sixth degree (up to the seventh person). This, according to the Roman computation, in the case of two persons equally removed from the common ancestor, would bar intermarriage to the twelfth degree.

As regards unions of affinity, one-half of the number are at once cut away by the law or custom which hinders the remarriage of widows.¹ Of the remaining half several unions are barred, but Indian lawyers do not recognise affinity as the principle of such prohibition, but refer in its place to the principle of *sapinda*-relationship.

The theory of *sapinda*-relationship is highly interesting. According to Vijnaneswar all are, strictly speaking, *sapindas*, who have in them particles of one and the same body. If therefore we substitute the biblical narrative for the traditions of Hinduism, all mankind are, strictly speaking, in *sapinda*-relationship with one another, as being all descended in the process of human generation from Adam and Eve, and so having particles of their bodies. For practical purposes, however, *sapindas* are not held to exist for more than a specified number of degrees; for some purposes six, for others only three. So far it will be seen that *sapinda*-relationship is coincident with consanguinity. To be "of one blood" is rather expressed by the native of India through the phrase "having particles of one body."

But *sapinda*-relationship is not confined to consanguinity. Husband and wife themselves, who in the language of Genesis are one flesh, are with the Indian lawyer *sapindas*, "because they together beget one body (the son)." In other words, *sapinda*-relationship is no less established by common offspring than by common ancestors. A very remarkable case of *sapinda*-relationship is that of the wives of two brothers. According to the computations of the Mosaic Code, and of Western Christendom, the wives of brothers are not connected with each other by affinity, though by the Roman law and by the

¹ The case of the Levirate custom has been already considered.

Canon law of the Eastern churches they are said to be related by "affinity of the second degree." In the Hindu law, however, the wives of brothers are *sapindas* to each other, because their two sons have a common grandfather. Thus the legal explanation of the prohibition has here first to dip to the offspring, and from the offspring to rise to the common ancestor.

Legal theories are commonly subsequent in point of time to the customs which they explain, and to this rule the theory of *sapinda*-relationship is probably no exception. Professor Banerjee finds the historical explanation of the Hindu system in the old Indian, or rather Aryan, custom, which assembled several generations under the roof of one "house-father," and so made prohibition of marriage between the various members of the household a necessary condition of household purity. "The rule when once established for the paternal side was extended to the maternal side by analogy."

Whatever theory may best account for the Hindu system of prohibitions, it is indisputable that they do not readily fall in with the theory of affinity laid down in the Mosaic Code. A man may not marry his step-mother's brother's daughter, nor again his step-mother's brother's daughter's daughter; but, as in the old Roman system, there is no prohibition of marriage with a wife's sister, with her niece, or with her aunt.

The Hindu prohibitions on the ground of artificial relationship, as adoption or fosterage, need not detain us.

For the Mohammedan law Mr. Baillie's *Digests* will be sufficient authority. According to the law of the Sunnis the prohibitions are as follows:

(c) The
Moham-
medan
law.

(a) Consanguinity.

1. All ascendants and descendants.
2. Collaterals.
 - i. Sister (whole or half).
 - ii. Female issue of brother or sister, how low soever.
 - iii. Aunts.

(a) Paternal.

- a. Father's whole sister.
- β. Father's half-sister by his mother.

γ . Father's half-sister by his father.

Also the paternal aunts of father and grandfather,
mother and grandmother.

(b) Maternal.

α . Mother's whole sister.

β . Mother's half-sister by her mother.

γ . Mother's half-sister by her father.

Also the maternal aunts of father or mother.

(β) Affinity.

1. Wives' female ascendants and descendants.

2. Sons' wives, or wives of male issue how low soever.

3. Fathers' wives, or wives of male ascendants how
high soever.

(γ) *Fosterage*

is the same bar as birth in all the relationships of
apparent consanguinity and affinity.

(δ) Women who may not be lawfully joined together.

Two sisters, or any two women, who, if we suppose
one of them a male, might not marry one another.

The prohibitions on the ground of consanguinity are thus sufficiently thorough. The principle of affinity is more clearly recognised than in the Aryan systems. It is not, however, extended to collaterals, except during the joint lifetime of the two persons whose relationship to one another creates affinity with the third person. A man may not have as his wives at the same time either two sisters, or any two women so nearly related that they might not marry one another if one of them were a man. But there is no prohibition of marriage with a deceased wife's sister, or with her niece, or with her aunt; or again with a deceased brother's wife. The prohibitions on the artificial ground of fosterage are held by the Musulman to be valid in all cases where an analogous relationship by consanguinity or affinity would prove a bar.

Prohibi-
tions of
affinity in
all three
systems,
but the

The prohibitions of the Roman, of the Hindu, and of the Musulman systems are examples, which might be indefinitely multiplied, of the existence in the race of a deeply-seated sense that the marriage of too near kin is a thing unholy.

The sense is strongest and most controlling with regard to near relationships of consanguinity. In all three of the systems, however, there are prohibitions which bar the marriage of persons related by affinity. It is not, however, necessarily on the ground of the affinity of the parties in the Mosaic sense that such prohibitions are made. They are to be found alike in the Roman, the Hindu, and the Musulman systems, as regards the marriages of all ascendants and descendants, as for instance that of a man with his step-mother, or with his step-granddaughter; but no one of the three systems expresses any strong feeling with regard to the marriages of persons related by collateral affinity, as for instance, the marriage of a man with his deceased wife's sister, or with his deceased brother's wife. The Musulman rules about women who may not be joined together in a polygamous marriage are remarkable in this connexion, as indicating a sense of the shamefulness of such unions, strong enough to be operative while all the parties are alive, and when practised therefore in a polygamous household, but not strong enough to be operative when the person who is the link of relationship is dead. These rules suggest also the interesting question, which cannot be undertaken here, as to whether they represent an ancient Semitic tradition, with which it would be possible to connect Lev. xviii. 18, or whether they are in fact merely an expansion of Jewish practice as known to the Arabs.

grounds
assigned
differ from
the ground
assigned
by the
Mosaic
Code.

3. THE CHURCH IN HISTORY.

(i.) *To the Conversion of Constantine.*

AUTHORITIES.

MINUCIUS FELIX, cap. 9.¹

Et de convivio notum est, passim omnes loquuntur, id etiam Cirtensis² nostri testatur oratio: ad epulas solenni die coeunt, cum omnibus liberis, sororibus, matribus, sexus omnis hominis et omnis aetatis: illic, post multas epulas, ubi convivium caluit, et incestae libidinis ebrietatis fervor exarsit, canis qui candelabro nexus est, jactu offulae ultra spatium lineae qua vinctus est, ad impetum et saltum

¹ Migne's Ed. p. 262.

² M. Cornelius Fronto.

provocatur: sic everso et extincto conscio lumine, impudentibus tenebris nexus infandae cupiditatis involvunt per incertum sortis; et si non omnes opera, conscientia tamen pariter incesti, quoniam voto universorum appetitur quicquid accidere potest in actu singulorum.

c. 31.¹

Ad nos pudorem non facie sed mente praestamus. Unius matrimonii vinculo libenter inhaeremus, cupiditate procreandi aut unam scimus aut nullam. Convivia non tantum pudica colimus, sed et sobria: nec enim indulgemus epulis, aut convivium mero ducimus: sed gravitate hilaritatem temperamus, casto sermone, corpore castiore; plerique inviolati corporis virginitate perpetua fruuntur potius quam gloriantur: tantum denique abest incesti cupido, ut nonnullis rubori sit etiam pudica conjunctio.

ORIGEN.

Against Celsus, vi. 27.²

Καὶ δοκεῖ μοι παραπλήσιον Ἰουδαίοις πεποιηκέναι, τοῖς κατὰ τὴν ἀρχὴν τῆς τοῦ χριστιανισμοῦ διδασκαλίας κατασκεδάσαι δυσφημίαν τοῦ λόγου· ὥς ἄρα καταθύσαντες παιδίον μεταλαμβάνουσιν αὐτοῦ τῶν σαρκῶν· καὶ πάλιν, ὅτι οἱ ἀπὸ τοῦ λόγου, τὰ τοῦ σκότου πράττειν βουλόμενοι, σβεννύουσι μὲν τὸ φῶς, ἕκαστος δὲ τῇ παρατυχούσῃ μίγνυται. Ἡτις δυσφημία παραλόγως πάλαι μὲν πλείστων ὄσων ἐκράτει, πείθουσα τοὺς ἄλλοτρίους τοῦ λόγου, ὅτι τοιοῦτοί εἰσι χριστιανοί· καὶ νῦν δὲ ἔτι ἀπατᾷ τινας, ἀποτρεπομένους διὰ τὰ τοιαῦτα κἂν εἰς κοινωνίαν ἀπλουστέραν λόγων ἤκειν πρὸς χριστιανούς.

TERTULLIAN.

Apology, ch. 8.³

Tum ille: infans tibi necessarius, adhuc tener, qui nexiat mortem, qui sub cultro tuo rideat; item panis, quo sanguinis jurulentiam colligas; praeterea candelabra et lucernae, et canes aliqui et offulae, quae illos ad eversionem luminum extendant, ante omnia cum matre et sorore tua venire debebis.

ch. 9.⁴

Nos ab isto eventu diligentissima et fidelissima castitas sepsit, quantumque ab stupris et ab omni post matrimonium excessu, tantum et ab incesti casu tuti sumus. Quidam multo securiores totam vim hujus erroris virgine continentia depellunt, senes pueri.

¹ Migne's Ed. p. 337.² *Ibid.* tom. i. p. 1333.³ *Ibid.* p. 313.⁴ *Ibid.* p. 326.

EUSEBIUS.

Ecclesiastical History, iv. 7.¹

Ταύτη δ' οὖν ἐπιπλείυτον συνέβαινε τὴν περὶ ἡμῶν παρὰ τοῖς τότε ἀπίστοις ὑπόνοιαν δυσσεβῆ καὶ ἀτοπωτάτην διαδίδασθαι, ὥς δὲ ἀθεμίτοις πρὸς μητέρας καὶ ἀδελφὰς μίξουσιν ἀνοστίαις τε τροφαῖς χρωμένων.

TERTULLIAN.

Against Marcion, iv. 34.²

Joannes enim retundens Herodem, quod adversus legem uxorem fratris sui defuncti duxisset, habentis filiam ex illa (non alias hoc permittente, imo et praeicipiente lege, quam si frater illiberis decesserit, ut a fratre ipsius et ex costa ipsius supparetur semen illa) conjectus in carcerem fuerat, ab eodem Herode postmodum et occisus. Facta igitur mentione Joannis, Dominus, et utique successus exitus ejus, illicitorum matrimoniorum et adulterii figuras jaculatus est in Herodem; adulterum pronuntians etiam qui dimissam a viro duxerit; quo magis impietatem Herodis oneraret, qui non minus morte quam repudio dimissam a viro duxerat; et hoc fratre habente ex illa filiam, et vel eo nomine illicite; ex libidinis, non ex legis instinctu; ac propterea propheten quoque assertorem legis occiderat.

Against Marcion, v. 7.³

Non defendo secundum legem Creatoris displicuisse illum, qui mulierem patris sui habuit, communis et publicae religionis secutus sit disciplinam.

CANONES APOSTOLORUM.⁴

c. 16. Ὁ δυνὸν γάμοις συμπλακεῖς μετὰ τὸ βαπτίσμα, ἢ παλλακὴν κτησάμενος, οὐ δύναται εἶναι ἐπίσκοπος, ἢ πρεσβύτερος, ἢ διάκονος, ἢ ὅλως τοῦ καταλόγου τοῦ ἱερατικοῦ.

c. 17. Ὁ χήραν λαβὼν, ἢ ἐκβεβλημένην, ἢ ἑταίραν, ἢ οἰκέτιν, ἢ τὴν ἐπὶ σκηνῆς, οὐ δύναται εἶναι ἐπίσκοπος, ἢ πρεσβύτερος, ἢ διάκονος, ἢ ὅλως τοῦ καταλόγου τοῦ ἱερατικοῦ.

c. 18. Ὁ δύο ἀδελφὰς ἀγαγόμενος, ἢ ἀδελφιδὴν, οὐ δύναται εἶναι κληρικός.

COUNCIL OF ELIBERIS.⁵*Canon* 61.

Si quis post obitum uxoris suae, sororem ejus duxerit, et ipsa fuerit fidelis, quinquennium a communione placuit abstineri; nisi forte dari pacem velocius necessitas coegerit infirmitatis.

¹ Migne's Ed. tom. ii. p. 320. ² *Ibid.* pp. 443, 444. ³ *Ibid.* p. 486.

⁴ Mansi, tom. i. pp. 32, 33.

⁵ *Ibid.* tom. ii. p. 16.

Canon 66.

Si quis praeveniam suam duxerit uxorem, eo quod sit incestus, placuerit nec in fine dandam esse ei communionem.

COUNCIL OF ANCYRA.

Canon 25.¹

Μνηστευσάμενός τις κόρην, προσεφθάρη τῇ ἀδελφῇ αὐτῆς, ὡς καὶ ἐπιφορέσαι αὐτήν. Ἐγῆμε δὲ τὴν μνηστὴν μετὰ ταῦτα. Ἡ δὲ φθαρεῖσα ἀπήγξατο. Οἱ συνειδότες ἐκελεύσθησαν ἐν δεκαετία δεχθῆναι εἰς τοὺς συνεστῶτας, κατὰ τοὺς ὠρισμένους βαθμούς.

COUNCIL OF NEO-CAESAREA.

Canon 2.²

Γυνὴ ἐὰν γήμηται δύο ἀδελφοῖς ἐξωθείσθω μέχρι θανάτου. Πλὴν ἐν θανάτῳ, διὰ τὴν φιланθρωπίαν, εἰποῦσα, ὡς ὑγιάνασα λύσει τὸν γάμον ἔξει τὴν μετάνοιαν. Ἐὰν δὲ τελευτήσῃ ἡ γυνὴ ἐν τοιοῦτῳ γάμῳ οὐσα ἦτοι ὁ ἀνὴρ, δυσχερὲς τῷ μέιναντι ἢ μετάνοια.

The legal systems under which the early Christians lived were

In reviewing the attitude of the early Christian Church towards the marriages of persons related to one another, it is essential to consider, as in the other marriage questions, what were the systems of law and the national habits with which the Christians of the first ages had to deal.

(1) the Roman and (2) the Jewish.

These were mainly the systems and the habits (1) of the Roman Empire, and (2) of the Jewish people. The law of Rome, which in this matter probably represented in the main the traditional rules of the Aryan race, retained, as has been seen, a deep abhorrence of the most offensive unions of near kin, and was as entirely clear on the unlawfulness of certain unions of affinity, as on the unlawfulness of certain unions of consanguinity. The general agreement in this matter of the law of Rome with the Divinely sanctioned law of a Semitic people is of the utmost significance as indicating the existence of one tradition of humanity. But it is also of the greatest importance as indicating the platform from which the Christian necessarily set out. Even if he would have disclaimed the binding character of the Mosaic legislation,

¹ Mansi, tom. ii. p. 520.

² *Ibid.* p. 542.

he could not for very shame be less bound than his heathen fellow-citizens of the Roman Empire. Consequently no question could well arise till at least that point was reached where the Roman law and the Mosaic code parted company, or where both of these systems were agreed in no longer imposing restrictions. The case of the deceased wife's sister is an illustration of one or other of these cases.

No question arises till the Roman law and the Mosaic code part company.

The Roman law, like the Jewish, had no hesitation in condemning such unions of affinity as the marriage of a man with his daughter-in-law, or with his step-daughter. It did not forbid his marriage with his wife's sister. The practice of the Jews, whatever may be the true reading of their law, was equally indulgent as to this particular relationship. It naturally, therefore, in course of time came up as a question for the Christian Church whether marriage with a wife's sister should be permitted, and we shall presently see how the question was decided. But of all those relationships which were included in the prohibitions of both codes there could hardly be, and, so far as the evidence goes, there was not, any question.

Case of the deceased wife's sister.

There was another reason which could not fail to influence the practice of the Christians in this matter, and to make them anxious to avoid all appearance of evil. The Christian name, wherever it was found throughout the Empire, was branded with the stigma of revolting follies and awful crimes, which the popular voice persisted in attaching to it. The worship of the ass's head, with the murder of an infant and the drinking of its blood, did not exhaust these malignant calumnies. It was persistently stated that "(Edipodean unions (*Οἰδιποδείας μίξεις*))" formed a prominent feature of the Christian orgies. Some passages which have been quoted above will shew at once the prevalence and the wildness of the charge. According to Minucius Felix, a Christian apologist of the third century (? A.D. 234), it was said that the Christians of either sex and every age met at night for their secret banquets, persons of the nearest relationship to one another being present, and that when the banquet was well advanced, and those present were inflamed with wine, the practice was to throw some food before

Influence of the slander as to the prevalence of incest among the Christians.

a dog, who was tied to a lamp-stand, in such a way that in jumping to secure the food the animal overturned the lamp, and that then in the darkness there ensued practices of unspeakable lust.¹ Athenagoras,² Origen,³ Tertullian,⁴ and Eusebius,⁵ all testify to the hold which this gross calumny had attained. Minucius Felix in denying the charge gives an elevated picture of Christian marriage, and concludes by saying that "in fine the desire of incestuous sin is so far removed from us, that to some (among us) even the modest union of marriage is a cause of blushing."⁶ It is not difficult to infer what must have been the effect upon the Christian mind of so foul a calumny, persistently repeated for a long course of years. There was probably among the Christians not one honourable gentleman or one high-minded lady who could avoid the consciousness that calumnies of this character were being circulated of him or of her, not only by the common people, but by those whose education and position should have taught them better. How could such an experience fail to make the early Christian abnormally acute in appreciating the very beginnings of evil of this particular kind? It is not surely in such a soil as the Christianity of the first three centuries that unholy alliances of near kin could have readily struck root.

Tertullian.
Herod's
sin, his
marriage
with his
sister-in-
law.

Passing now to authorities treating directly of the alliances of near kindred, we may first notice Tertullian (c. A.D. 200). Referring to the case of Herod's unlawful connexion, he says that S. John the Baptist reprov'd Herod "because in opposition to the law he had married the wife of his deceased brother, who had a daughter by her (a union which the law permitted only on the one occasion of the brother childless, when it even prescribed such a marriage in order that by his own brother, and from his own wife, seed might be reckoned to the deceased husband)." Tertullian thus, while endeavouring to explain the Levirate law, has no doubt that the main

¹ Minucius Felix, c. 9. (Migne's Ed. p. 262.)

² Athenagoras, *Apology*, c. 4.

³ Origen, *Against Celsus*, vi. 27. (Migne's Ed. tom. i. p. 1333.)

⁴ Tertullian, *Apology*, c. 8. (Migne's Ed. tom. i. p. 313.)

⁵ Eusebius, *Ecclesiastical History*, iv. 7. (Migne's Ed. tom. ii. p. 320.)

⁶ Minucius Felix, c. 31. (Migne's Ed. p. 337.)

reason of S. John's reproof was the relationship of affinity. He takes it for granted that Philip was dead.¹ It is true that he goes on to argue, with his Montanist fervour against second marriages, that our Lord's denunciation of the man who marries a divorced woman as being an adulterer was spoken with an intended reference to the case of Herodias, who had been divorced, he says, by death. But he has no sort of doubt that what S. John the Baptist was attacking was the incestuous connexion, nor again any doubt that that connexion was forbidden by the law.

The first fifty-one of the Apostolical Canons have been assigned to the end of the second or to the third century. The canons numbered 16, 17, and 18 are of interest in the present enquiry. No one might be advanced to the episcopate, to the priesthood, or to the diaconate, who had been twice married after baptism.³ No one could become a *κληρικός* who had married two sisters.⁴ The force of the distinction is to be found in the word *κληρικός*, a cleric, which included those who were in minor orders as well as bishops, priests, and deacons. Thus canon 26 includes readers and singers among the clergy. It was provided therefore that, while there were certain bars to the higher orders which did not apply to the minor orders, marriage with two sisters in succession was a bar to even the lowest order of the ministry. Nor is there any indication that in this case baptism could be held to have made a *tabula rasa* of the past. Apparently the fact of successive marriage with two sisters, even though the second union was entered upon before baptism, barred the entrance to the lowest ministrations of the Church.

The
Apostolical
Canons.

No one
who has
married
two sisters
may
become a
cleric.

The canon, however, must be allowed to give some indication of indulgent treatment in the case of the laity. It would certainly run counter to the general tone of Christian antiquity to infer that if a man had married his wife's sister before baptism, and at his baptism had used his liberty to

¹ According to Josephus (*Ant.* xviii. 5, § 4) Herodias left Philip for Antipas during Philip's lifetime.

² Tertullian, *Against Marcion*, iv. 34. (Migne's Ed. tom. ii. pp. 443, 444.)

³ *Canones Apostolorum*, c. 16. (Mansi, tom. i. p. 32.) ⁴ *Ibid.* c. 18.

put her away, then that union or any other stain which was completely past and gone would have been brought against him as a bar to the holding of clerical office. It was probably not till later, and then only in the West, that it would have been a bar to the episcopate itself. If then marriage with a deceased wife's sister was a bar to clerical office, we conclude that it was so because the union still continued, or at least had continued for some time after baptism. If indeed there had been (1) a rule that any persons so united must put away the second sister as a condition of baptism, and (2) a further rule that any of the faithful contracting such marriages should be excluded from communion, canon 18 would have no application. If therefore canon 18 is to be regarded as of practical application, we are led to conclude that in the second or third century (1) a convert who presented himself for baptism, while retaining his union with the second of two sisters, was not refused baptism, but was accepted and allowed to retain his wife, or even (2) that a baptized Christian who availed himself of the facilities of the secular law was not excommunicated for doing so, or (3) that both these cases were suffered.

It appears highly probable that at first some laxity in the case of the deceased wife's sister would be suffered. The Roman law allowed such unions: the Jewish practice allowed them no less: and the Christian Church had as yet framed no table of prohibited degrees, or passed any resolution on the subject. A natural shrinking led to the exclusion of all persons who had contracted such unions from any share in the conduct of Divine service, but there probably the restrictions of the earliest ages came to an end. In the ordinary development of discipline the recurrence of cases, which, while they had not been expressly prohibited, still shocked the Christian spirit, would lead to enquiry, to united deliberation, and to authoritative decision; and this would seem to be what actually occurred. At the close of the period under review we find that the councils of Eliberis and of Ancyra both make reference to cases of the connexion of a man with two sisters; and the case of the marriage of a woman with two brothers is dealt with by the Council of Neo-Caesarea.

In the 61st canon of the Council of Eliberis (bet. A.D. 306 and 324) it was enacted that if a man married his deceased wife's sister, both parties being Christians, he was to be excluded from communion for five years, but that in case of grave sickness the term might be abridged.¹

Council of
Eliberis.
Penance
for
marriage
with
deceased
wife's
sister.

This canon is remarkable as indicating that, subject to penalty, the union of a man with his deceased wife's sister was still endured by the Church. The Christian sense of the unfitness of such unions was indeed no longer content with merely excluding those involved in them from the ministries of the Church; they were to undergo five years of penance; but there is no hint of any obligation to bring the union to an end as a necessary condition of reconciliation.

Subject to
penalty
such unions
apparently
endured.

In the 66th canon marriage with a step-daughter was to be punished by exclusion from communion even at the last, "because it is incest."² This offence, which thus appears to have required attention in at least one case, is thus visited with the extreme penalty of the Church. As it was a case no less forbidden by the secular law than by Christian feeling, no question would be likely to arise with regard to it. It was a heinous crime, and had simply to be visited with the worst of punishments. At the same time it should not be overlooked that the union thus condemned as incest was one of affinity only.

The first Synod of Ancyra is usually assigned to A.D. 314. The last of its twenty-five canons legislates for a particular case which had arisen. A certain man had espoused a damsel whose sister he afterwards seduced. He then married the first betrothed. On this the seduced sister hanged herself. The sentence was that those who were in collusion in this matter (*οἱ συνελδοτες*) were to undergo penance for ten years in the various grades before they could be received among the *consistentes*. The punishment is severe, but the complication of the incest with desertion and the causing of suicide makes it difficult to estimate exactly the sense of the council as to the sinfulness of the connexion considered in its own inherent character alone. Nor is it clear whether the connexion was

First
Synod of
Ancyra.

Case of
connexion
with two
sisters.

¹ Mansi, tom. ii. p. 16.

² *Ibid.*

understood to be brought to an end, or whether, subject to the penance imposed, it was suffered to continue.¹

First
Council
of Neo-
Caesarea.

A woman
who
marries
two
brothers to
be excluded
from
communion
till death.

The first council of Neo-Caesarea (A.D. 315) in its 2nd canon decreed that a woman who should marry two brothers was to be excluded from communion till death. If on her deathbed she expressed her resolution to break off the connexion in the event of her recovery, she might be communicated. If either party to such a connexion died while it continued, the surviving partner, presumably as one who had not shewed signs of repentance so long as the sin could be retained, was to be subjected to severe penance before reconciliation.²

This canon, nearly contemporary as it is with the canons of Eliberis and Ancyra, is noteworthy as giving the first clear intimation that there can be no reconciliation of persons incestuously connected so long as the connexion continues. This conclusion is arrived at in the case of the husband's brother, a connexion more generally reprobated than that with the wife's sister.

These citations supply the evidence of the period prior to Constantine. They accord with the view already adopted, that questions could hardly arise till the point was reached at which the secular law was less exacting than the Divine. The two cases in which people were found to offend most readily were the cases of the wife's sister, and the brother's wife, cases not included in the prohibitions of the Roman law.

(ii.) *From Constantine to Justinian.*

AUTHORITIES.

S. BASIL.

*Epistle 199. Canon 23.*³

Περὶ δὲ τῶν δύο ἀδελφὰς γαμούντων, ἥ ἀδελφοῖς δυσὶ γαμουμένων, ἐπιστολίδιον ἡμῖν ἐκπεφώνηται, οὗ τὸ ἀντίγραφον ἀπεστείλαμέν σου τῇ εὐλαβείᾳ. Ὁ δὲ ἀδελφοῦ ἰδίου γυναῖκα λαβὼν οὐ πρότερον δεχθήσεται πρὶν ἀποστῆναι αὐτῆς.

*Epistle 217. Canon 67.*⁴

Ἀδελφομιξία τὸν τοῦ φονέως χρόνον ἐξομολογηθήσεται.

¹ Mansi, tom. ii. p. 520.

³ Migne's Ed. tom. iv. p. 724.

² *Ibid.* p. 542.

⁴ *Ibid.* p. 805.

Canon 68.

Ἡ τῆς ἀπειρημένης συγγενείας εἰς γάμον ἀνθρώπων σύστασις, εἰ φωραθείη ἐν ἁμαρτήμασι γεγενημένη, τὰ τῶν μοιχῶν ἐπιτίμια δέξεται.

Canon 76.¹

Ὁ αὐτὸς τύπος καὶ περὶ τῶν τὰς νύμφας ἑαυτῶν λαμβανόντων.

Canon 78.

Ὁ δὲ αὐτὸς τύπος κρατεῖτω καὶ ἐπὶ τῶν τὰς δύο ἀδελφὰς λαμβανόντων εἰς συννοικέσιον εἰ καὶ κατὰ διαφόρους χρόνους.

Canon 79.

Οἱ δὲ ταῖς μητρυαῖς ταῖς ἑαυτῶν ἐπιμαινόμενοι τῷ αὐτῷ ὑπόκεινται κανόνι, ᾧ καὶ οἱ ταῖς ἑαυτῶν ἀδελφαῖς ἐπιμαινόμενοι.

Epistle 160.²

Ἀφίκετο ἡμῖν γράμματα τὴν ἐπιγραφὴν ἔχοντα Διοδώρου, τὰ δὲ ἐφεξῆς ἄλλον τινὸς πρέποντα εἶναι μᾶλλον ἢ Διοδώρου. Δοκεῖ γάρ μοι τις τῶν τεχνικῶν, τὸ σὸν πρόσωπον ὑποδὺς, οὕτως ἑαυτὸν ἀξιόπιστον ἐθελῆσαι ποιῆσαι τοῖς ἀκροωμένοις. "Ὅς γε, ἐρωτηθεὶς ὑπὸ τινος, εἰ θεμιτὸν αὐτῷ πρὸς γάμον ἀγαγέσθαι τῆς γυναικὸς τελευτησάσης τὴν ἀδελφὴν, οὐκ ἔφριξε τὴν ἐρώτησιν, ἀλλὰ καὶ πρῶτος ἤνεγκε τὴν ἀκοήν, καὶ τὸ ἀσελγὲς ἐπιθύμημα πάννυ γενναίως καὶ ἀγωνιστικῶς συγκατέπραξεν. Εἰ μὲν οὖν παρὴν μοι τὸ γράμμα, αὐτὸ ἂν ἀπέστειλα, καὶ ἐξήρκεις σαι αὐτῷ τε ἀμῶναι καὶ τῇ ἀληθείᾳ· ἐπεὶ δὲ ὁ δείξας πάλιν ἀφείλετο, καὶ ὥσπερ τι τρόπαιον καθ' ἡμῶν περιέφερε, κεκωλυκότων τὸ ἐξ ἀρχῆς, ἔγγραφον ἔχειν λέγων τὴν ἐξουσίαν· ἐπέστειλα νῦν σοι ὥστε διπλῇ τῇ χειρὶ ἡμῶς ἐλθεῖν ἐπὶ τὸν νόμον ἐκείνον λόγον, καὶ μηδεμίαν αὐτῷ ἰσχὺν καταλιπεῖν, ἵνα μὴ ἔχῃ βλάπτειν ῥαδίως τοὺς ἐντυγχάνοντας.

Πρῶτον μὲν οὖν, ὁ μέγιστος ἐπὶ τῶν τοιούτων ἐστὶ, τὸ παρ' ἡμῖν ἔθος, ὃ ἔχομεν προβάλλειν, νόμον δύναιμι ἔχον, διὰ τὸ ἐφ' ἀγίων ἀνδρῶν τοὺς θεσμοὺς ἡμῖν παραδοθῆναι. Τοῦτο δὲ τοιοῦτόν ἐστιν· εἴαν τις, πάθει ἀκαθαρσίας ποτὲ κρατηθεὶς, ἐκπέσῃ πρὸς δνεῖν ἀδελφῶν κοινωνίαν, μήτε γάμον ἡγεῖσθαι τοῦτον, μηθ' ὅλως εἰς Ἐκκλησίαν πλήρωμα παραδέχεσθαι πρότερον, ἢ διαλῦσαι αὐτοὺς ἀπ' ἀλλήλων. "Ὡστε εἰ καὶ μηδὲν ἕτερον εἰπεῖν ἦν, ἐξήρκει τὸ ἔθος πρὸς τὴν τοῦ καλοῦ φυλακὴν. Ἐπειδὴ δὲ ὁ τὴν ἐπιστολὴν γράψας, ἐπιχειρήματι κιβδὴλφ κακὸν τοιοῦτον ἐπειράθη τῷ βίῳ ἐπαγαγεῖν, ἀνάγκη μηδὲ ἡμῶς τῆς ἐκ τῶν λογισμῶν βοηθείας ὑφέσθαι· καίτοι γε ἐπὶ τῶν σφόδρα ἐναργῶν μείζων ἐστὶ τοῦ λόγου ἢ παρ' ἐκάστου πρόληψις.

¹ Migne's Ed. tom. iv. p. 803.² *Ibid.* pp. 621, sqq.

Γέγραπται, φησὶν, ἐν τῷ Λευϊτικῷ· Γυναῖκα ἐπ' ἀδελφῇ αὐτῆς οὐ λήψῃ ἀντίζηλον, ἀποκαλύψαι τὴν ἀσχημοσύνην αὐτῆς ἐπ' αὐτῇ, ἔτι ζώσης αὐτῆς. Δῆλον δὴ οὖν ἐκ τούτου εἶναί φησιν, ὅτι συγχωρεῖται λαμβάνειν τελευτησάσης. Πρὸς δὲ τοῦτο πρῶτον μὲν ἐκείνο ἐρῶ· ὅτι ὅσα ὁ νόμος λέγει, τοῖς ἐν τῷ νόμῳ λαλεῖ· ἐπεὶ οὕτω γε καὶ περιτομῇ, καὶ Σαββάτῳ, καὶ ἀποχῇ βρωμάτων ὑποκεισόμεθα. Οὐ γὰρ δὴ, εἰ μὲν τι εὖρωμεν συντρέχον ἡμῶν ταῖς ἡδοναῖς, τῷ ζυγῷ τῆς δουλείας τοῦ νόμου ἑαυτοὺς ὑποθήσομεν· εἰ μὲν δέ τι φανῇ βαρὺ τῶν νομίμων, τότε πρὸς τὴν ἐν Χριστῷ ἐλευθερίαν ἀποδραμούμεθα. Ἐρωτήθημεν εἰ γέγραπται λαμβάνειν γυναῖκα ἐπ' ἀδελφῇ. Εἶπομεν, ὅπερ ἀσφαλὲς ἡμῖν καὶ ἀληθὲς, ὅτι οὐ γέγραπται. Τὸ δ' ἐκ τῆς τοῦ ἀκολούθου ἐπιφορᾶς, τὸ σιωπηθὲν συλλογίζεσθαι νομοθετοῦντός ἐστιν, οὐ τὰ τοῦ νόμου λέγοντος· ἐπεὶ οὕτω γε ἐξέσται τῷ βουλομένῳ κατατολμῆσαι καὶ ἔτι ζώσης τῆς γυναικὸς λαμβάνειν τὴν ἀδελφήν. Τὸ γὰρ αὐτὸ τοῦτο σόφισμα καὶ ἐπ' ἐκείνου ἀρμόζει. Γέγραπται γὰρ, φησὶν, Οὐ λήψῃ ἀντίζηλον, ὥς τὴν γε ἔξω τοῦ ζήλου λαβεῖν οὐκ ἐκώλυσεν. Ὁ δὲ συνηγορῶν τῷ πάθει ἀζηλότυπον εἶναι διορίεται τὸ ἦθος τῶν ἀδελφῶν. Ἀνηρημένης οὖν τῆς αἰτίας, δι' ἣν ἀπηγόρευσε τὴν ἀμφοτέρων συνοίκησιν, τί τὸ κωλύον ἔσται λαμβάνειν τὰς ἀδελφάς; Ἄλλ' οὐ γέγραπται ταῦτα, φήσομεν. Ἄλλ' οὐδὲ ἐκεῖνα ὥρισται. Ἡ δὲ ἔννοια τοῦ ἀκολούθου ὁμοίως ἀμφοτέραις τὴν ἀδειαν δίδωσιν. Ἐδει δὲ καὶ μικρὸν ἐπὶ τὰ κατόπιν τῆς νομοθεσίας ἐπαναδραμόντα, ἀπηλλάχθαι πραγμάτων. Ἔοικε γὰρ οὐ πᾶν εἶδος ἁμαρτημάτων περιλαμβάνειν ὁ νομοθέτης· ἀλλ' ἰδίως ἀπαγορεύειν τὰ τῶν Αἰγυπτίων, ὅθεν ἀπῆρεν ὁ Ἰσραὴλ, καὶ τὰ τῶν Χαναναίων, πρὸς οὓς μεθίσταται. Ἐχει γὰρ οὕτως ἡ λέξις· Κατὰ τὰ ἐπιτηδεύματα τῆς Αἰγύπτου, ἐν ᾗ παρῴκησατε ἐπ' αὐτῆς, οὐ ποιήσετε· καὶ κατὰ τὰ ἐπιτηδεύματα γῆς Χαναὰν, εἰς ἣν ἐγὼ εἰσάξω ὑμᾶς ἐκεῖ, οὐ ποιήσετε, καὶ ἐν τοῖς νομίμοις αὐτῶν οὐ πορεύσεσθε. Ὡστε τοῦτο εἰκός πού τὸ εἶδος τῆς ἁμαρτίας μὴ ἐμπολιτεύεσθαι τότε παρὰ τοῖς ἔθνεσι· διὸ μηδὲ τῆς ἐπ' αὐτῷ φυλακῆς προσδεθῆναι τὸν νομοθέτην, ἀλλ' ἀρκεσθῆναι τῷ ἀδιδάκτῳ ἔθει πρὸς τὴν τοῦ μύσους διαβολήν. Πῶς οὖν, τὸ μείζον ἀπαγορεύσας, τὸ ἔλαττον ἐσιώπησεν; Ὅτι ἐδόκει πολλοὺς τῶν φιλοσάρκων, πρὸς τὸ ἔτι ζώσαις ἀδελφαῖς συνοικεῖν, τὸ ὑπόδειγμα βλάπτειν τοῦ πατριάρχου. Ἡμᾶς δὲ τί χρὴ ποιεῖν; Τὰ γεγραμμένα λέγειν, ἢ τὰ σιωπηθέντα προσεξεργάζεσθαι; Αὐτίκα τὸ μὴ δεῖν μιᾷ ἐταίρᾳ κεχρηῆσθαι πατέρα καὶ υἱὸν ἐν μὲν τοῖς νόμοις τούτοις οὐ γέγραπται, παρὰ δὲ τῷ Προφῆτῃ μεγίστης κατηγορίας ἡξίωται. Υἱὸς γὰρ, φησὶ, καὶ πατὴρ πρὸς τὴν αὐτὴν παιδίσκην εἰσεπορεύοντο. Πόσα δὲ εἶδη ἄλλα τῶν ἀκαθάρτων παθῶν τὸ μὲν τῶν δαιμόνων διδασκαλεῖον ἐξεῦρεν, ἢ δὲ θεία Γραφὴ ἀπεσιώπησε, τὸ

σεμνὸν ἑαυτῆς ταῖς τῶν αἰσχροῶν ὀνομασίαις καταρβύνειν οὐχ αἰρουμένη, ἀλλὰ γενικοῖς ὀνόμασι τὰς ἀκαθαρσίας διέβαλεν! Ὡς καὶ ὁ Ἀπόστολος Παῦλός φησι· Πορνεία δὲ καὶ ἀκαθαρσία πᾶσα μὴδὲ ὀνομαζέσθω ἐν ἡμῖν, καθὼς πρέπει ἁγίοις· τῷ τῆς ἀκαθαρσίας ὀνόματι τὰς τε τῶν ἀρρένων ἀρρήτοποίας καὶ τὰς τῶν θηλειῶν περιλαμβάνων. Ὡστε οὐ πάντως ἡ σιωπὴ ἄδειαν φέρει τοῖς φιληδόνοις.

Ἐγὼ δὲ οὐδὲ σεσιωπηῆσθαι τὸ μέρος τοῦτό φημι, ἀλλὰ καὶ πᾶν σφοδρῶς ἀπηγορευκέναι τὸν νομοθέτην.

Τὸ γὰρ, Οὐκ εἰσελεύσῃ πρὸς πάντα οἰκεῖον σαρκὸς σου, ἀποκαλίψαι ἀσχημοσύνην αὐτῶν, ἐμπεριεκτικόν ἐστι καὶ τούτου τοῦ εἶδους τῆς οἰκειότητος. Τί γὰρ ἂν γένοιτο οἰκειότερον ἀνδρὶ τῆς ἑαυτοῦ γυναικὸς, μᾶλλον δὲ τῆς ἑαυτοῦ σαρκὸς; Οὐ γὰρ ἔτι εὐτὶ δύο, ἀλλὰ σὰρξ μία. Ὡστε διὰ τῆς γυναικὸς ἡ ἀδελφὴ πρὸς τὴν τοῦ ἀνδρὸς οἰκειότητα μεταβαίνει. Ὡς γὰρ μητέρα γυναικὸς οὐ λήψεται, οὐδὲ θυγατέρα τῆς γυναικὸς, διότι μὴδὲ τὴν ἑαυτοῦ μητέρα, μὴδὲ τὴν ἑαυτοῦ θργατέρα· οὕτως οὐδ' ἀδελφὴν γυναικὸς, διότι μὴδὲ ἀδελφὴν ἑαυτοῦ. Καὶ τὸ ἀνάπαλιν, οὐδὲ τῇ γυναικὶ ἐξέσται τοῖς οἰκεῖοις τοῦ ἀνδρὸς σινοικεῖν. Κοινὰ γὰρ ἐπ' ἀμφοτέρων τῆς συγγενείας τὰ δίκαια. Ἐγὼ δὲ παντὶ τῷ περὶ γάμου βουλευομένῳ διαμαρτίρομαι, ὅτι παράγει τὸ σχῆμα τοῦ κόσμου τούτου, καὶ ὁ καιρὸς συνεσταλμένος ἐστίν, ἵνα καὶ οἱ ἔχοντες γυναῖκας ὥς μὴ ἔχοντες ᾧσιν. Ἐὰν δέ μοι παραναγινώσκη τὸ, Αἰξάνεσθε καὶ πληθύνεσθε· καταγελῶ τοῦ τῶν νομοθεσιῶν τοῖς καιροῖς μὴ διακρίνοντος. Πορνείας παραμυθία ὁ δεύτερος γάμος, οὐκ ἐφόδιον εἰς ἀσέλγειαν. Εἰ οὐκ ἐγκαρτερεύονται, γαμησάτωσαν, φησὶν· οὐχὶ δὲ καὶ γαμοῦντες παρανομεῖτωσαν.

Οἱ δὲ οὐδὲ πρὸς τὴν φύσιν ἀποβλέπονσιν, οἱ τὴν ψυχὴν λημῶντες τῷ πάθει τῆς ἀτιμίας, πάλα διακρίνασαν τὰς τοῦ γένους προσηγορίας. Ἐκ ποίας γὰρ συγγενείας τοὺς γεννηθέντας προσαγορεύουσιν; Ἀδελφοὺς αὐτοὺς ἀλλήλων ἢ ἀνεψιοὺς προσερούσιν; ἀμφότερα γὰρ αὐτοῖς προσαρμόσει διὰ τὴν σύγχυσιν. Μὴ ποιήσης, ὦ ἄνθρωπε, τὴν θεῖαν μητρικὴν τῶν νηπίων· μὴδὲ τὴν ἐν μητρὸς τάξει θάλπειν ἀφείλουσαν, ταύτην ἐφοπλίσσης ταῖς ἀμειλίκοις ζηλοτυπίαις. Μόνον γὰρ τὸ γένος τῶν μητρικῶν καὶ μετὰ θάνατον ἐλαίνει τὴν ἔχθραν· μᾶλλον δὲ οἱ μὲν ἄλλως πολέμοι τοῖς τεθνηκόσι σπένδονται· αἱ δὲ μητρικαὶ τοῦ μίσους μετὰ τὸν θάνατον ἄρχονται. Κεφάλαιον δὲ τῶν εἰρημένων, Εἰ μὲν νόμῳ τις ὁρμᾶται πρὸς τὸν γάμον, ἡνοικται πᾶσα ἡ οἰκουμένη· εἰ δὲ ἐμπαθὴς αὐτῷ ἡ σπονδὴ, διὰ τοῦτο καὶ πλέον ἀποκλεισθήτω, ἵνα μάθῃ τὸ ἑαυτοῦ σκεῆος κτᾶσθαι ἐν ἁγιασμῷ καὶ τιμῇ, μὴ ἐν πάθει ἐπιθυμίας. Πλείονά με λέγειν ὀρμημένον τὸ μέτρον ἐπέχει τῆς ἐπιστολῆς. Εὐχομαι δὲ ἢ τὴν παραίνεσιν ἡμῶν ὑσχυροτέραν τοῦ πάθους ἀποδεχθῆναι, ἢ μὴ

ἐπιδημήσαι τῇ ἡμετέρᾳ τὸ ἄγος τοῦτο· ἀλλ' ἐν οἷς ἂν ἐτολμήθῃ τόποις ἐναπομεῖναι.

S. TIMOTHY OF ALEXANDRIA.¹

Ἐρώτησις. Εἰς τὸ ζεύξαι γάμον ἐὰν καλέσῃ τις κληρικὸν, ἀκούσῃ δὲ τὸν γάμον παράνομον, ἢ θειογαμίαν, ἥγουν ἀδελφὴν τελευτησάσης γυναικὸς τὴν μέλλουσαν ζεύγνυσθαι, εἰ ὀφείλει ἀκολουθῆσαι ὁ κληρικὸς, ἢ προσφορὰν ποιῆσαι;

Ἀπόκρισις. Ἀπαξ εἶπατε· Ἐὰν ἀκούσῃ ὁ κληρικὸς τὸν γάμον παράνομον. Εἰ οὖν ὁ γάμος παράνομός ἐστιν, οὐκ ὀφείλει ὁ κληρικὸς κοινωνεῖν ἀμαρτίας ἀλλοτρίας.

S. AMBROSE.

Letter to Paternus. (Cl. i. 60.)²

Paterni quidem unanimi mei salutationem legi, sed consultationem haudquaquam paternam; ut velis filio neptem copulare ex filia: sed nec avo te, nec patre dignam. . . .

Quid enim est, quod dubitari queat; cum lex divina etiam patruales fratres prohibeat convenire in conjugalem copulam, qui sibi quarto sociantur gradu? Hic autem gradus tertius est, qui etiam civili jure a consortio conjugii exceptus videtur. Sed prius sacrae legis scita interrogemus; praetendis enim in tuis litteris, quod permissum hoc divino jure connubium hujusmodi pignoribus existimetur, eo quod non sit prohibitum. Ego autem et prohibitum assero; quia cum leviora interdicta sint de patruelibus fratribus, multo magis hoc quod arctioris est plenum necessitudinis, interdictum arbitror. Qui enim leviora astringit, graviora non solvit, sed alligat. Quod si ideo permissum putas, quia specialiter non est prohibitum sermone Legis reperies, ne pater filiam suam accipiat uxorem. Numquid ideo licet, quia non est prohibitum? Minime; interdictum est enim naturae jure, interdictum est lege, quae est in cordibus singulorum; interdictum est inviolabili praescriptione pietatis, titulo necessitudinis. Quanta hujusmodi invenies non esse interdicta lege per Moysen edita, et tamen interdicta sunt quadam voce naturae.

S. AUGUSTINE.

De Civitate Dei xv. c. 16.³

Experti autem sumus in connubiis consobrinarum etiam nostris temporibus propter gradum propinquitatis fraterno gradui proximum,

¹ Migne's Ed. *Pat. Gr.* tom. xxxiii. p. 1303.

² Migne's Ed. tom. ii. p. 1183.

³ *Ibid.* tom. vii. p. 459.

quam raro per mores fiebat, quod fieri per leges licebat; quia id nec divina prohibuit, et nondum prohibuerat lex humana. Veruntamen factum etiam licitum propter vicinitatem horrebatur illiciti; et quod fiebat cum consobrina, pene cum sorore fieri videbatur: quia et ipsi inter se propter tam propinquam consanguinitatem fratres vocantur, et pene germani sunt. Fuit autem antiquis patribus religiosae curae, ne ipsa propinquitas se paulatim propaginum ordinibus dirimens longius abiret et propinquitas esse desisteret, eam nondum longe positam rursus matrimonii vinculo colligare, et quodammodo revocare fugientem. Unde jam pleno hominibus orbe terrarum, non quidem sorores ex patre vel matre, vel ex ambobus suis parentibus natas, sed tamen amabant de suo genere ducere uxores. Verum quis dubitet honestius hoc tempore etiam consobrinorum prohibita esse conjugia? non solum secundum ea quae disputavimus, propter multiplicandas affinitates, ne habeat duas necessitudines una persona, cum duae possint eas habere, et numerus propinquitatis auferri; sed etiam quia nescio quomodo inest humanae verecundiae quiddam naturale atque laudabile, ut cui debet causa propinquitatis reverendum honorem, ab ea contineat, quamvis generatricem, tamen libidinem, de qua erubescere videmus et ipsam pudicitiam conjugalem.

Quaestiones in Heptateuchum iii. 61.¹

Quaeritur utrum hoc vivo fratre, an mortuo sit prohibitum: et non parva quaestio est. Si enim dixerimus de vivi fratris uxore locutam Scripturam, uno generali praecepto, quo prohibetur homo ad uxorem accedere alienam, etiam hoc utique continetur. Quid est ergo quod tam diligenter has personas, quas appellat domesticas, propriis prohibitionibus distinguit a cæteris? Non enim et quod prohibet de uxore patris, hoc est, de noverca, vivo patre accipiendum est, et non potius mortuo.

iii. 63.²

Uxorem super sororem ejus non accipies in zelum. Hic non prohibuit superducere, quod licebat antiquis propter abundantiam propagationis, sed sororem sorori noluit superduci; quod videtur fecisse Jacob, sive quia nondum fuerat lege prohibitum, sive quia suppositae alterius fraude deceptus est, et illa magis de placito veniebat, quam posterius accepit; sed injustum erat priorem dimitti, ne faceret eam moechari. Hoc autem quod ait *in zelum*, utrum ideo positum est, ne sit zelus inter sorores, qui inter illas quae sorores

¹ Migne's Ed. tom. iii. p. 705.

² *Ibid.*

non essent contemnendus fuit? an ideo potius, ne propter hoc fiat, id est ne hoc animo fiat, ut in zelum sororis soror superducatur.

THEODORET.

*Quaestiones in Genesin.*¹

Qu. 86. Τίνος χάριν αἱ γυναῖκες ἐξηλοτύπον ἀλλήλας.

Ἀτελείς ἦσαν, καὶ δυσσεβοῦς ἀνδρὸς θυγατέρες, τὰ ξόανα θεοῦς ὀνομάζοντος. Τούτου ἕνεκεν νομοθετῶν ὁ Θεὸς τὸν τοιοῦτον ἀπαγορεύει γάμον· Οὐ λήψῃ γὰρ, φησὶ, γυναῖκα ἐπ' ἀδελφῇ αὐτῆς ἀντίζηλον αὐτῆς.

ROMAN SYNOD, A.D. 402.²

Canones Synodi Romanorum ad Gallos Episcopos, juxta quaestiones ab illis propositas.

c. 9. De eo qui sororem uxoris suae duxerit uxorem in lege veteris testamenti scriptum est, ad suscitandum semen defuncti fratris oportere ducere uxorem, ita tamen si liberos ex eodem minime reliquisset. Inde est enim quod Joannes Baptista contradixit Herodi, quoniam non licebat ei accipere uxorem, quia de fratre reliquerat filios. Tamen propter virilem generationem legis constitutio imperabat hoc fieri a viro: de foeminis nusquam est lectum, sed forte praesumptum. Nam lex dicit: *Maledictus qui cum uxoris suae sorore dormierit.* Numquid duas habuit uxores Jacob uno in tempore sorores causa mysterii, et concubinas, et omnes qui nati sunt patriarchae sunt appellati? Nunc jam Christianis habere non permittitur. Numquid uxores et concubinas habuerunt? Sed nunc hoc non patitur fieri testamentum, ubi amplius de integritate tractatur, et castitas Christo docente laudatur, cum dicit: *Non omnes capiunt verbum Dei, sed quibus datur.*

c. 11. De eo qui avunculi sui uxorem duxerit. Avunculi filium ducere non licet, quoniam similis causa generando per gradus patris extranei separatur atque purgatur: retro autem redire fas non est. . . .

In the period from Constantine to Justinian reference may be made to S. Basil, S. Timothy of Alexandria, S. Ambrose, S. Augustine, Theodoret, and the Roman Synod of 402 A.D.

S. Basil. S. Basil in his Canonical Epistles has several decisions with regard to unions of near kin. In his Canon 23 (Ep. 199) he rules that a man who has married his brother's wife is not to be

¹ Migne's Ed. tom. i. p. 196.

² Mansi, tom. iii. p. 1137.

received until he has left her. He thus, notwithstanding the permission of the secular law, re-affirms the sentence of the council of Neo-Caesarea, that in the case of a man who has married his brother's wife no performance of penance can render the union admissible. In the same canon he refers to a letter (the letter to Diodorus?) in which he has treated the subject of marriages with two sisters and with two brothers.¹

Various
penalties.

By Canon 67 (Ep. 217) the incest of a brother and a sister is to be visited with the same duration of penance as would be assigned to murder.² Canon 68 visits unions within prohibited relationships with the penalties of adultery. Canon 75 deals with the case of a man who has sinned with his half-sister. His penance in the various degrees is to last eleven years. Canon 76 visits a union with a daughter-in-law with a similar penalty. Canon 78 assigns a seven years' penance in the case of a man who has married two sisters, although at different times. Canon 79 visits sin with a step-mother with the same penalty as sin with a sister.

The epistle to Diodorus of Tarsus (Canon 87) is a well-known expression of the mind of S. Basil on the subject of marriage with a deceased wife's sister. It has been already noticed that in Canon 78 S. Basil assigned a seven years' penance to a man who had married two sisters. In the letter to Diodorus he is not less pronounced. He begins by reciting that he has seen a letter bearing the signature of Diodorus, which he considers could not have been written by Diodorus, inasmuch as it countenances the union of a man with his deceased wife's sister. He accordingly asks Diodorus to join him in combating this perversion. First there is the argument of custom. "And our custom is that if any man, being overcome by filthy passion, fall into an unlawful union with two sisters, neither is such union to be accounted marriage, nor is either of the parties ever to be reconciled to the unity of the Church, unless they have first parted the one from the other." This statement is interesting as shewing that the mind of the Church on this matter had matured. The Councils of

Epistle to
Diodorus
of Tarsus.

Argument
against
marriage
with a
deceased
wife's
sister.

¹ S. Basil, *Epist.* 199, *Canon* 23. (Migne's Ed. tom. iv. p. 724.)

² *Ibid.* *Epist.* 217, *Canon* 67. (Migne's Ed. tom. iv. p. 805.)

Eliberis and Ancyra may not have required the offending parties to separate: the custom of S. Basil's day accounts the union to be simply no marriage and essentially inadmissible.

Replying to the argument that Lev. xviii. 18 permits union with the wife's sister when the wife is dead, S. Basil contends:

1. That the law is addressed to those under the law.
2. That on being asked the question whether it was not written that a man might take a woman to her sister, he had replied that it was not written.
3. That the same sophism would allow a man to take his wife's sister during his wife's life-time if only he did not take her so as to "vex" her.
4. That the prohibitions of Lev. xviii. only deal expressly with the sins of the Egyptians and Canaanites. That the case of two sisters at once was mentioned because it was the case of Jacob.
5. That, as an example, the sin mentioned by Amos—"a son and his father will go in unto the same maid"—was not mentioned in Leviticus. That the offences of uncleanness were not specified in full detail.
6. That, notwithstanding, the prohibition "none of you shall approach to any that is near of kin to him to uncover their nakedness" includes the case of the wife's sister. "For what can there be nearer to a man than his own wife; or rather than his own flesh? For 'they are no longer two, but one flesh.' So then, through the wife, her sister necessarily comes to be near to the husband. For as he is not to take the mother of his wife, nor his wife's daughter, because neither can he take his own mother nor his own daughter, so neither is he to take the sister of his wife any more than his own sister. And *vice versa* neither will it be lawful to the woman to be married to any who are near of kin to her husband. For the rights of kindred are common on both sides."
7. That the injunction to "increase and multiply" does not cover transgressions.

8. That marriages of kindred cause confusion. "Make not, O man, the young children's aunt into their step-mother, nor arm against them with her implacable jealousies her who ought to foster them in her mother's place."¹

S. Timothy of Alexandria was elected patriarch of that throne in 381 A.D. His "canonical answers" are authoritative decisions in reply to questions put to him by his clergy for their direction. They subsequently became part of the canon law of the Eastern Church. In one of these "questions" S. Timothy is asked if a *clericus* should take part in a marriage which he knows to be unlawful, as, for instance the marriage of a man with his aunt, or with his deceased wife's sister. He replies that if a marriage is unlawful the *clericus* must have nothing to do with it. He ought not to take part in others' sins. There is no question raised as to the fact of the unlawfulness of such unions to Christians, which appears to be entirely recognised. The date of these answers will lie between 381 and 385 A.D., the years which bound S. Timothy's occupancy of the patriarchate.²

S. Timothy
of
Alexandria.

Marriage
with an
aunt, or
with a
wife's
sister,
unlawful.

The case of marriage with a niece was a case where it was likely that difficulties would arise. It had not been expressly forbidden in the Mosaic Code, nor had it been avoided in Jewish practice; and the ancient prohibition of the Roman law had been removed by the enactment of the Senate in the time of Claudius. In the time of S. Ambrose we find a certain Paternus, a Christian gentleman of honourable rank, wishing to marry his son to that son's niece. It appears that Paternus was father of the son by one marriage, while by another marriage he was father of a daughter, whose daughter again was the contemplated bride. The girl's mother was thus the half-sister of the young man. Paternus referred to S. Ambrose with regard to the proposed marriage, a reference which S. Ambrose characterises as "worthy of thee neither as a father, nor as a grandfather. . . . For what is there which can be subject of doubt?" The fact that the union was not expressly

S.
Ambrose.
Epistle to
Paternus.
Marriage
with a
niece
unlawful.

¹ S. Basil, *Epist.* 160. (Migne's Edition, tom. iv. pp. 621 *sqq.*)

² S. Timothy of Alexandria in Migne's *Patrologia Græca*, tom. xxxiii. p. 1303.

mentioned in the Mosaic Code was of no significance, inasmuch as more distant relationships were distinctly prohibited. *Qui enim leviora adstringit, graviora non solvit sed adligat.* "Is it therefore permitted, because it is not expressly prohibited? In no wise, for it is interdicted by the law of nature; it is interdicted by the law which is found in every man's heart; it is interdicted by the inviolable prescription of piety, by the ground of necessity."¹

The marriage of first cousins was not forbidden by the Mosaic code. By the ancient law of Rome such marriages were unknown, but in the first three centuries of Christianity the Roman law and custom permitted them. At the end of the fourth century (Arcadius and Honorius, A.D. 396) they were prohibited as incestuous, but they were again legalised in A.D. 405.

S.
Augustine.
On the
marriage
of first
cousins.

S. Augustine's remarks on the marriage of first cousins in the *De Civitate Dei* are of interest. He says that in his day such marriages had been by the custom of the day very rarely contracted, although they were permitted by the laws, since neither did the divine law prohibit them, nor had they as yet been prohibited by human law. Notwithstanding, men shrank from a lawful course on account of its nearness to the unlawful, and because what had place with a cousin seemed almost as though it was with a sister.²

The case
of the
brother's
wife.

In the *Questions upon the Heptateuch* there are at least two passages of some interest in the present connexion. Commenting on the prohibition to take a brother's wife, he remarks that it refers of course to the wife of a brother deceased, since the wife of a living brother would have anyhow come under the condemnation of adultery.³ With regard to the vexed question as to the meaning of the phrase, "a wife to her sister," he is of opinion that it is not the polygamous character of the marriage which is condemned, inasmuch as polygamy was conceded to the ancients for the greater abundance of offspring; but the marrying, in addition to an existing wife, of that wife's

The case
of the
wife's
sister.

¹ S. Ambrose, *Letter to Paternus* (Cl. i. 60). [Migne's Ed. tom. ii. p. 1183.]

² S. Augustine, *De Civitate Dei*, xv. c. 16. (Migne's Ed. tom. vii. p. 459.)

³ *Ibid. Quaestiones in Heptateuchum*, iii. 61. (Migne's Ed. tom. iii. p. 705.)

sister (*sororem sorori superduci*); and that this had been the case of Jacob, whether because it had not yet been prohibited by law, or because of the special circumstances resulting from the fraud which was practised upon him.¹

Theodoret in his *Questions upon Genesis* remarks of the same prohibition that it was pronounced by God because of the case of Jacob's wives, whose vexing of one another he attributes to the fact that they were the daughters of an impious man who worshipped images.²

The Roman Synod of 402 A.D., in canons addressed to the Bishops of Gaul in reply to questions submitted by them, decides that marriage with a wife's sister, and that marriage with an uncle's wife, are unlawful.³

(iii.) *From Justinian.*

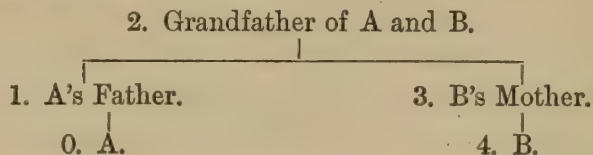
In an enquiry which confines itself to the Divine laws of marriage, the period of Christian history which intervenes between Justinian and the development of the system of Papal dispensations is of comparatively little significance as to the question before us. Alike in the East and in the West the tendency was in the direction of an enormous increase of prohibitions, an increase at once foreign to the natural conscience of mankind, to the Mosaic Code, and to the traditions of Christian antiquity. In three directions, viz., (1) consanguinity, (2) affinity, and (3) the newly-found doctrine of spiritual relationship, the development went on till the original prohibitions were hardly recognisable in the mathematically-worked-out plans of the mediæval churches. As, however, there is on the one hand no contention that these late accretions form part of the Divine law, while on the other it is not disputed that from the time of Justinian to the period of Papal dispensations the prohibitions retained in the Anglican table were universally enforced, a very brief survey of the period will be sufficient for our present purpose.

¹ S. Augustine, *Quæstiones in Heptateuchum*, iii. 63. (Migne's Ed. tom. iii. p. 705.)

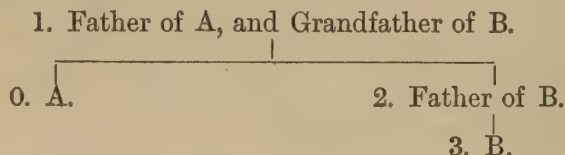
² Theodoret, *Quæstiones in Genesim*. (Migne's Ed. tom. i. p. 196.)

³ Mansi, tom. iii. p. 1137.

The Roman method of computing degrees of relationship was to count from one of the parties up to a common ancestor, and then down to the other party. Thus first cousins were held to be related in the fourth degree



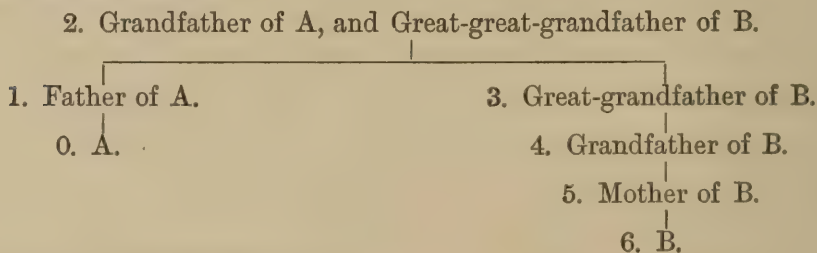
uncle and nephew in the third degree.



The old Romans, as has been seen, forbade the marriage of persons related in the fourth degree, as first cousins, but the prohibition fell early into desuetude, and an attempt to revive it under the Emperors was not successful. The system of Justinian permitted marriage in the fourth degree.

The Eastern Church eventually extended prohibition to the seventh degree.

The Eastern Church adopted all the prohibitions of the Roman law which were in force in Christian times, and by degrees extended them. The Council in Trullo (A.D. 680) again forbade marriages within the fourth degree.¹ Not long after, the Emperors Leo the Isaurian and Constantine (A.D. 740) extended the prohibition to second cousins, and to all other persons related to each other within the sixth degree, even though not equidistant from a common ancestor.² Thus the marriage of a first cousin with a first cousin twice removed came under the bar.



¹ Canon 54.

² Zhishman, *Eherecht der Orientalischen Kirche*, p. 238, quoting Ecl. ii. 2, and Prochiron vii. 4.

The patriarchs of Constantinople, Sisinnius (in his Tome of A.D. 997)¹ and Michael Cerularius (A.D. 1043-1059),² went still farther, and forbade marriage within the seventh degree of relationship. The Eastern canonists, while accordingly extending the system of prohibition to a length previously unknown in the Christian Church, have left us an illustration, employed already in this volume, which is a very apt and useful one for the understanding of the principle of these prohibitions of marriage. Descent from a common ancestor, say they, is like the attraction from a magnet, the force of which becomes constantly less with distance till at last it is practically inoperative.³ They rule that the magnet should exercise prohibitive force at the seventh degree, but cease to do so at the eighth, as at third cousins. The illustration may be accepted with thankfulness, and has already been employed in these pages; but members of the Anglican Church at least would apply the closure at a nearer point. The stand taken by the Eastern Church at the seventh degree has held its ground, and is still the rule of the East.

The principle of the magnet.

In relationships of affinity or ἀγκιστεία a parallel development went on. The Eastern Church was not content with the Mosaic limitation of the prohibition by reason of affinity, to the "affinity of one marriage," known to the Roman lawyers as *affinitas primi generis*. The Roman law recognised a second affinity which was in principle, as has been seen, rather the extension of the principle of the *respectus parentelæ*, than any intensified sense of the binding character of the Mosaic oneness of kin. Thus a man might not marry his step-son's widow, nor a woman her step-daughter's husband. The same degree of affinity in the case of collaterals was no bar, presumably because the *respectus parentelæ* did not come in. However, be the principle of the Roman prohibition what it might, the Eastern Church adopted the prohibition, and in adopting it assigned to it as its principle, not the *respectus parentelæ*, but the oneness of kin arising from the affinity. This principle accepted involved at once a fresh batch of prohibitions. For

Affinity of two marriages.

¹ Zhishman, *Eherecht der Orientalischen Kirche*, p. 242.

² *Ibid.* p. 244.

³ *Ibid.* p. 252.

instance, not only was a man debarred from marriage with his wife's sister, but his brother was debarred from marriage with her. In other words, two brothers might not marry two sisters. To sum up this burden of the *affinitas secundi generis*, as maintained by the Eastern Church, it may be said to amount to this; If two families, previously unconnected, become united through the marriage of a member of one family with a member of the other, all further marriages between these two families become estopped. Thus the Council in Trullo forbade the marriage of a father and son with a mother and daughter, of a father and son with two sisters, and of two brothers with two sisters.¹ The patriarch Sisinnius extended prohibitions of this character to the sixth degree. He forbade the following unions:

1. The marriage of two brothers with two women who were first cousins to each other.
2. The marriage of two sisters with two men who were first cousins to each other.
3. The marriage of an uncle and a nephew with two sisters.
4. The marriage of two brothers with two women who were aunt and niece to each other.²

Spiritual
relation-
ship.

A remarkable development in the East and West alike was the development of the doctrine of spiritual relationship. There can be little doubt that it arose directly from the prohibitions of the Roman law on the ground of relationship by adoption. Unknown to Christian antiquity, it is yet found in the Code of Justinian, where, in an enactment mainly regarding prohibitions on the ground of relationship by adoption, the further provision is made; "That person is on all wise to be prohibited from marriage, whom anyone, whether she be his

¹ *Council in Trullo*, c. 54: συνείδομεν γυμνότερον τὰ περὶ τούτου ἐκθέσθαι, ὀρίζοντες ἀπὸ τοῦ νῦν τὸν τῇ οἰκείᾳ ἐξαδέλφῃ πρὸς γάμου κοινωνίαν συναπτόμενον· ἢ πατέρα καὶ υἱὸν μητρὶ καὶ θυγατρὶ· ἢ δύο κόραις ἀδελφαῖς πατέρα καὶ υἱὸν, ἢ ἀδελφοῖς δυὸς μητέρα καὶ θυγατέρα, ἢ ἀδελφοὺς δύο δυὸς ἀδελφαῖς, ὑπὸ τὸν τῇ ἐπταετίας πίπτειν κανόνα, ἀφισταμένων αὐτῶν προδήλως τοῦ παρανόμου συνοικεσίου. (Mansi, tom. xi. p. 968.)

² Zhishman, *Eherecht der Orientalischen Kirche*, p. 321, quoting the *Tome* of Sisinnius, v. 14.

ward or not, has undertaken (as god-parent) from holy baptism, since no other circumstance can so induce paternal affection, and the just prohibition of nuptials, as a bond of this kind, whereby their souls are united, with God as Mediator (*Deo mediante*)."¹ The passage is worthy of consideration. It is not only apparently the first formal prohibition of the kind, but it assigns the ground of the prohibition as induced paternal affection, and that in an enactment mainly concerned with prohibitions on the ground of adoption. To this is added the statement that the souls of the two persons are united, *Deo mediante*. The induced paternal affection appears to be brought in as a result parallel to the result of adoption, and rightly bringing with it the prohibitions involved in adoption. The union of the souls of the two persons, *Deo mediante*, is in fact the new doctrine of spiritual affinity, which was not long in forgetting that it had taken its beginnings from the law of adoption.

There is here only mention of the relationship of *god*-parent to *god*-child, a relationship of ascendant and descendant, involving the *respectus parentelæ*. Once admitted, this new ground of relationship would find no difficulty in extending itself to collaterals. Sponsors were in spiritual relationship to one another, to one another's natural relations, and to the natural relations of the god-child. The numerical computation set in again. Spiritual relationship must involve the prohibition of marriage to so many degrees. A synod under the patriarch Nicholas III. (A.D. 1084-1111) laid down that the prohibition extended to the seventh degree, as in blood-relationship.² In counting degrees both kinds of relationship were taken. The son (in blood) of the god-parent was held to be the brother of the god-child; the children of these two were held to be first cousins, or related in the fourth degree; the children of these again were

Extension
to
collaterals,

and to the
seventh
degree.

¹ *Code of Justinian*, v. 4 c. 26. (A.D. 530, Oct. 1.) "Ea videlicet persona omnimodo ad nuptias venire prohibenda, quam aliquis, sive alumna sit, sive non, a sacrosancto suscepit baptismate, quum nihil aliud sic inducere potest paternam affectionem et justam nuptiarum prohibitionem, quam hujusmodi nexus per quem Deo mediante animæ eorum copulatae sunt."

² Zhishman, *Eherecht der Orientalischen Kirche*, pp. 273, 274.

taken as second cousins, or related in the sixth degree. Even the seventh degree of such relationship was a bar to marriage.

It is not
contended
that these
prohibi-
tions are of
the law
Divine.

In face of such a development of human prohibitions the English churchman will probably feel that he does well to be angry. At least he will find no one to contradict him when he affirms that these prohibitions form no part of the Divine law of marriage, and that, in fact, they found no place in the primitive Church.

It is not a little remarkable that the Eastern churches, which of all the churches of Christendom have been most regardless of the primitive traditions of the indissolubility of marriage, have, in this matter of the multiplication of prohibited degrees, stood inflexibly firm on the standpoint of the mediæval Church; and that even at the present day it is not admitted that any dispensation is possible from any one of these prohibited degrees.¹ In the light of the ruin wrought by dispensation in the West, it may be felt that honour is due to any stand made against the dispensing system. Yet is there here no making "the heart of the righteous sad, whom I have not made sad";² is there here no making "the commandment of GOD of none effect by your tradition"?³

It is, however, no part of the present writer's office to sit in judgment on a great historic Church, which has in so much been faithful and true. The present enquiry is concerned only with the Divine laws of marriage, and it is here sufficient to affirm with all clearness that in those Divine laws the accretions of the period following Justinian have neither part nor lot.

In the
West
prohibition
extended
to the
seventh
generation.

As in the East, so in the West, the tendency was in the direction of multiplying prohibitions, and in some particulars the tendency was carried farther than in the East. Thus, while the Eastern Church was content with prohibiting marriage within seven degrees according to the Eastern or old Roman reckoning, the Western Church went so far as to prohibit marriages within seven degrees according to the new Western reckoning, which was probably derived from a German

¹ Zhishman, *Eherecht der Orientalischen Kirche*, p. 713.

² Ezekiel xiii. 22.

³ S. Matt. xv. 6.

source.¹ By this Western reckoning seven degrees were practically equivalent to seven generations. So the Synod of London, in A.D. 1102, prohibits intermarriage *usque ad septimam generationem*.² Brother and sister were related in the first degree, first cousins in the second degree, second cousins in the third degree, and similarly beyond. Consequently the prohibition of marriage within seven degrees in the West was indefinitely more burdensome than even the prohibition of the East; in practice it covered all remembered relationship. Accordingly the Roman Synod of 721 prohibits marriage with any blood relation or wife of a blood relation;³ and the Council of Worms in 868 similarly prohibits intermarriage so long as relationship is known or remembered.⁴ Again, while spiritual relationship in the East meant spiritual relationship through baptism, in the West it was extended to the sponsors of confirmation, and to the relationship of priest and penitent in the sacrament of Penance.⁵ On the other hand, all prohibitions on the ground of affinity other than affinity *primi generis* were definitely abandoned by the fourth Lateran Council, held in A.D. 1215 under Innocent III., which also reduced the prohibited degrees from seven to four, thereby making them almost coincident with the degrees prohibited in the East.⁶

Spiritual
relation-
ship
extended.

Affinity is
only a bar
when
primi
generis.

The extension of prohibition to distant degrees of relationship, and to spiritual ties, does not come within the scope of this volume. The last contention which the Latin Church would make with respect to such prohibitions is that they have any claim to be regarded as of right Divine. On the other hand, there is no question but that the Levitical prohibitions were uniformly imposed, and submitted to without

The system
of papal
dispensa-
tion.

¹ Freisen, *Geschichte des Canonischen Eherechts*, who enumerates the various pronouncements on the subject, pp. 374-401.

² Mansi, tom. xx. p. 1152.

³ *Ibid.* xii. p. 263.

⁴ Hartzheim, *Conc. Germaniae*, ii. p. 315: "Nulli Christiano liceat de propria consanguinitate seu cognatione uxorem accipere usque dum generatio recordatur, cognoscitur, aut in memoria tenetur."

⁵ Freisen, *Geschichte des Canonischen Eherechts*, pp. 507-539.

⁶ *Concilium Lateranense IV.* c. 50: "Prohibitio quoque copulae conjugalis quartum consanguinitatis et affinitatis gradum de cetero non excedat: quoniam in ulterioribus gradibus jam non potest absque gravi dispendio hujusmodi prohibitio generaliter observari." (Mansi, xxii. 1038.)

dispute, till the introduction of the fatal system of Papal dispensations. The reason of that system is not far to seek. Indeed, some system of dispensation in matters purely ecclesiastical must be acknowledged to be only reasonable. It is a maxim of jurisprudence that the power which makes a law can dispense from it, but that the persons subjected to the law can have no power to dispense themselves. By a reasonable system of dispensation the Anglican Churches, in common with other Churches of Christendom, thus exercise, through the bishops, the right of dispensing with the merely ecclesiastical requirement of the publication of banns. Similarly it can hardly be said to be ground of complaint that Gregory II., only five years after the passing of the burdensome prohibition of the Roman Synod in A.D. 721, assigned to the converts of S. Boniface the fourth degree as the limit of prohibition.¹ The long and monotonous history of dispensations from ecclesiastical prohibitions need not detain us. It unfortunately familiarised the mind with the idea of Papal dispensations in marriage cases, and the Church at large had hardly learnt to make any sufficient distinction between prohibitions Divine and human. The greater theologians indeed are clear enough. S. Thomas Aquinas affirms that it is the business of the Church to separate those between whom, by reason of consanguinity or affinity, there can be no true marriage, and he knows nothing of dispensations with regard to such persons.² Nor does it appear that the field of the Levitical prohibitions was entered upon by the Papal dispensing claims till the 15th century.

Pope
Martin V.
(1427 A.D.)
first
dispenses
in the case
of the
wife's
sister.

In A.D. 1427 Pope Martin V. granted a dispensation to the Count of Foix either to marry his wife's sister, or to continue a union with a woman whose sister he had formerly seduced. The affinity of course would be the same in either case. This, so far as appears, is the first instance of Papal dispensation

¹ Mansi, xii. 245. "Dicimus, quod oportuerat quidem, quam diu se agnoscunt affinitate propinquos, ad hujus copulae non accedere societatem. Sed quia temperantia magis, et praesertim in tam barbara gente, plus placet quam districtio censurae, concedendum est ut post quartam generationem jungantur."

² S. Thomas Aquinas, *Suppl. tertiae partis summae*, qu. 55, art. 9.

with regard to such affinity. When an application was made to Martin's immediate successor, Eugenius IV., to sanction the marriage of the Dauphin, afterwards Louis XI., with his wife's sister, it was refused as being *ultra vires*. The canonist Turrecremata, who adjudged the case, records that "that affair was considered by the command of the lord Eugenius in the presence of us, to whom the cause was committed, and it was adjudged that the Pope could not dispense."¹ This excellent precedent was, however, soon abandoned. Alexander VI. (Borgia) granted a dispensation to Emmanuel, king of Portugal, to marry his wife's sister; and another to Ferdinand, king of Sicily, to marry his aunt by blood. The familiar instance of Henry VIII. and Katharine of Aragon,² for which a dispensation was granted by Julius II. in 1503, is the first known case of dispensation to marry a brother's wife, and only the third of dispensation in the same degree of affinity, counting as the two first the dispensations of marriage with a wife's sister already noticed. The Council of Trent, while naturally siding with Rome in the dispute which arose upon the subject, is very guarded in its utterances: "If any say that only those degrees of consanguinity and affinity which are mentioned in Leviticus can hinder a contract of marriage, or dissolve (a union) already contracted, and that the Church cannot dispense in some of these, or lay down that a greater number shall hinder or nullify, let him be *anathema*."³ The council thus carefully avoids specifying the dispensable degrees. Estius, who died in 1613, says that he has only heard of one example of a dispensation to marry a wife's sister since the Council of Trent, and anything like readiness to grant such dispensations is only to be found in the last two centuries. The marriage of uncle

Eugenius
IV. refuses
as *ultra*
vires.

Alexander
VI.
Case of
Henry
VIII. and
Katharine
of
Aragon.

¹ Turrecremata, *Commentaria super Decreto Gratiani*, pars ii. c. 35, qu. 2. (Tom. iii. p. 465 b. Venice, 1578.)

"Judicatum est quod non poterat Papa dispensare."

² For various documents see Pocock's *Records of The Reformation*, Oxford, 1870, vol. i. See too Fleury's *Continuator*, bk. 120, c. 42.

³ *Canones et Decreta Conc. Trid. Sess. 24, can. 3.* "Si quis dixerit, eos tantum consanguinitatis et affinitatis gradus qui Levitico exprimiuntur posse impedire matrimonium contrahendum et dirimere contractum, nec posse Ecclesiam in nonnullis illorum dispensare, aut constituere ut plures impediunt aut dirimant, anathema sit."

and niece, or of aunt and nephew by blood is in some respects more shocking than the closest marriage of affinity. Yet in these cases too, following the deplorable precedent of Alexander VI. in the case of Ferdinand of Sicily, dispensations have been frequently granted.

Cardinal
Cajetan's
expression
of dilemma.

Theologians of the Latin obedience accordingly find themselves in a grave dilemma, which is aptly expressed by Cardinal Cajetan: "The Pope is subjected to the natural law, and does not stand above it, so that he can remove or alter it; and yet King Emmanuel of Portugal has taken two sisters as his wives, one after another, of whom the second is still living. The Queen of England had contracted marriage with the brother of her present consort; Ferdinand the younger, King of Naples, married, with a dispensation from Pope Alexander VI., Joanna his father's sister, who still lives; and yet it is evident that this is prohibited in the law Divine (*haec autem constat esse in divina lege prohibita*). Thus are opposed on the one hand the Divine law in precepts of this kind, on the other the authority of the Roman pontiff."¹ Cardinal Cajetan, holding that the Pope cannot well be wrong, concludes that the only marriages which are ultimately excluded by the law of nature are marriage with a father and with a mother. On the whole this appears to be the usual doctrine of the Latin Church at the present day. Many theologians of repute are not, however, prepared to go so far. Even Sanchez declares that the marriage of brother and sister cannot be sanctioned by Papal dispensation.²

His
conclusion.

There can hardly be need to use strong terms of the fatal system of dispensations. Its fruits are unholy, and by them we judge the tree. No Christians except those of the Roman Catholic Church are prepared to admit the premise that Papal dispensations must needs be justifiable. Consequently conclusions based upon that premise have no force except for Roman Catholics. We do not arrive at a knowledge of the

¹ *Thomae Aquinatis secunda secundae cum comment. Cajetani*. Lugd. 1558, p. 536a.

² Sanchez, *De Sancto Matrimonii Sacramento*, Lib. viii. Disp. 6, § 10. (Ed. Antwerp, 1607, tom. ii. p. 473.)

extent of the law Divine by the process of first subtracting all which has been invaded by human temerity.

The English Church of the post-Reformation period, amidst her many faults, may fairly claim that she has been true to the primitive traditions of Christian marriage. Unlike the churches of the East, she has never admitted by one sufficient act the rightfulness of remarriage after divorce. Unlike her sisters of the West, she has been careful to maintain the Divine prohibition of marriage with too near kin.

The
English
Church.

The most noteworthy instance of the position which the Church of England has taken up in this matter is of course the case of Henry VIII. and Katharine of Aragon. From the theological standpoint the life and motives of Henry VIII. do not call for consideration. The possible mixture of motives in members of the convocations may be similarly disregarded. The question which came before the convocations was the purely theological one, and was treated as such. The Canterbury convocation by 263 votes to 19 decreed that "it was unlawful to marry a deceased brother's wife," and "that such a prohibition of the Divine law could not be dispensed with by the Pope." The same conclusion was arrived at in the York convocation by 51 votes to 2.¹ The only difficulty in the particular case of Henry and Katharine was as to the question of fact. It was denied by Katharine that consummation of the prior marriage had been effected. If this contention had been true, there would have been no affinity, and therefore no hindrance to the marriage with Henry. But after due enquiry and consideration it was formally found that the prior marriage had been consummated,² and accordingly Archbishop Cranmer in his court at Dunstable pronounced the marriage of Henry and Katharine null and void.

The case
of Henry
VIII. and
Katharine
of
Aragon.

¹ *Concilia Magnae Britanniae et Hiberniae* (Wilkins), iii. 756-8, 767.

² See Froude, *History of England*, vol. i p. 420: "It is enough that Ferdinand, at the time of her first marriage, satisfied himself, after curious enquiry, that he might hope for a grandchild; and that the fact of the consummation was asserted in the treaty between England and Spain, which preceded the marriage with Henry, and in the supposed brief of Pope Julius which permitted it. We cannot in consequence be surprised that the convocation accepted the conclusion which was sanctioned by so high authority, and we rather wonder at the persistency of Catherine's denials."

The
Anglican
Table.

There appears to be no instance before or since the Reformation in which the Church of England has finally sanctioned any breach of the Levitical prohibitions as regards the marriage of near kin. The various Acts of Parliament which have dealt with the question as a subject for secular legislation need not be here considered. The Anglican table represents the authoritative mind of the English Church. First put forth by Archbishop Parker in 1563, soon after Elizabeth's accession, it was adopted by the 99th canon of 1603 in the following terms: "No person shall marry within the degrees prohibited by the Laws of GOD and expressed in a table set forth by authority in the year of Our Lord 1563. And all marriages so made shall be adjudged incestuous and unlawful, and consequently shall be dissolved as void from the beginning; and the parties so married shall by course of law be separated, and the aforesaid Table shall be in every Church publicly set up and fixed at the charge of the Parish." The Table, as has been seen, is simply the Levitical system exhaustively stated. The 99th canon declares that all the marriages specified in it are "incestuous and unlawful," and treats them as "void from the beginning." This continues to be the voice of the Church of England. On the other hand, outside the limits of the table there are no prohibitions, and there is accordingly no need of dispensation. With us, happily, a marriage union is either entirely legitimate or entirely disallowed.

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